

No. 14201

United States  
Court of Appeals

For the Ninth Circuit.

*See Vol. - 2906-2907*

CHET L. PARKER and LOIS M. PARKER,

Appellants,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL  
WINANS, ETHEL WINANS, ROSS M. WINANS,  
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees,

and

WALTER STEGMANN,

Appellant,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL  
WINANS, ETHEL WINANS, ROSS M. WINANS,  
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees.

Transcript of Record

In Five Volumes

Volume I  
(Pages 1 to 530) **FILED**

**MAY - 7 1954**  
Appeals from the United States District Court for the  
District of Oregon

**PAUL P. O'BRIEN**  
**CLERK**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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For Appellees Paul Winans, et al.



In the District Court of the United States  
for the District of Oregon

Civil No. 6242

TITLE AND TRUST COMPANY, a Corporation,  
Plaintiff,

vs.

CHET L. PARKER, LOIS M. PARKER, and  
WALTER STEGMANN,  
Defendants.

### AMENDED COMPLAINT

Comes now the plaintiff and for cause of action  
against the defendants alleges:

#### I.

That at the time of commencement of this action  
plaintiff was and now is a corporation organized un-  
der the laws of the State of Oregon and authorized  
thereby to engage in the business of insuring title  
to real property.

#### II.

That defendants, Chet L. Parker and Lois M.  
Parker, are husband and wife, and at the time of  
commencement of this action were and now are  
residents of the State of Washington.

#### III.

That at the time of commencement of the above  
action, defendant Walter Stegmann was and now  
is a resident of the State of Washington.

## IV.

That the amount in controversy between plaintiff and Parkers and between plaintiff and Stegmann in each instance exceeds the sum of \$3,000 exclusive of interests and costs and attorney's fees.

## V.

That by Act of Congress February 14, 1859, admitting Oregon as a state of the United States of America, 11 Stat. at Large 383, Chapter 33, Section 4, Sections 16 and 36 in each township in said state not sold or otherwise disposed of at said time were granted to the State of Oregon for use as school lands.

## VI.

That at the time of the admission of the State of Oregon into the United States of America, the following described property was a part of the public lands of the United States of America, and said property had not been sold or otherwise disposed of; and that subsequent to the admission of said state and prior to February 11, 1889, no patent has been issued on said property by the United States of America:

The Northeast one-quarter of the Northwest one-quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian, Hood River County, Oregon (hereinafter referred to as "Lot 2").

## VII.

That the official United States Government survey

of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian as made and approved by the Commissioner of the Land Office of the Department of the Interior of the United States of America on June 17, 1892, was as represented on the attached Exhibit A.

### VIII.

That on June 17, 1892, all public lands within Section 16, Township 1 South, Range 8 East, Willamette Meridian were set apart and included within that portion of the Mt. Hood National Forest known as the "Bull Run Timber Reserve" by proclamation of the President of the United States.

### IX.

That some prior to July 30, 1907, the State of Oregon selected the Northwest one-quarter of the Northwest one-quarter of Section 28, Township 20 South, Range 21 East, W.M., as lieu lands for the said Lot 2 and on July 30, 1907, the Commissioner of the General Land Office of the Department of Interior of the United States of America officially approved said selection of lieu lands.

### X.

That none of the facts or matters set forth in Paragraphs VII, VIII, and IX above are matters of record in the official records of Hood River County, Oregon.

### XI.

The following deeds purporting to convey the above-described property are shown by the official

records of deeds of Hood River County, Oregon, as follows and none others and that said conveyances set forth below were made, executed and delivered:

1. State of Oregon to Chas. A. Macrum by grant deed dated February 11, 1889, filed of record in Hood River County on April 13, 1907, in Volume L, page 288 of Deeds, and also filed of record in Volume 43, at page 480 of the Deed Records of Wasco County, State of Oregon.

2. C. A. Macrum (an unmarried man) to W. R. Winans by warranty deed dated April 25, 1902, and filed of record in Hood River County, Oregon, on April 26, 1902, in Volume K at page 481 of the Deed Records of Hood River County, Oregon, and also filed of record in Volume 33 at page 595 of the Deed Records of Wasco County, Oregon.

3. W. R. Winans and Mary Winans, husband and wife, to Ethel Winans by bargain and sale deed dated December 29, 1943, and filed of record on December 30, 1943, in Volume 30 at page 405 of the Deed Records of Hood River County, Oregon.

4. Ethel Winans, a single woman, to Chet L. Parker by deed dated September 10, 1951, and filed of record September 11, 1951, Volume 46 of Deeds, Instrument No. 80451 and a copy of which deed is hereto annexed marked Exhibit B.

## XII.

That subsequent to February 11, 1889, and to date Hood River County, as a political subdivision of the State of Oregon, has assessed, levied and collected

real property taxes, including fire patrol assessments on said lot 1 and lot 2 and said taxes were paid from the tax years 1902-1903 through and including 1950-1951 by W. R. Winans and by Ethel Winans or by Paul Winans on their behalf.

### XIII.

That on or about December 30, 1943, Paul Winans and Ethel Winans made application for and on said date the Pacific Abstract Title Company, by the Hood River Abstract and Investment Co., its agent, issued to Ethel Winans a policy of title insurance No. 136-HR-37882 in the face amount of \$8,000.00, insuring a fee simple title in said Lots 1 and 2 in the said Ethel Winans free from all encumbrances, subject to certain exceptions contained and set forth in said policy not material herein.

### XIV.

Commencing in 1939 Paul Winans had carried on negotiations with the Forest Supervisor of the Mt. Hood National Forest of the Forest Service, United States Department of Agriculture, for the exchange of said Lots 1 and 2 for certain United States timber lands. Such negotiations continued over the succeeding years until the said Forest Supervisor wrote Paul Winans a letter, dated January 9, 1944, stating in part, that the United States claimed ownership of said Lot 2 but proposing to proceed with the exchange of said Lot 1. Paul Winans replied by letter dated February 5, 1944, that by virtue of all available records, plats and tax assessments

W. R. Winans had been the openly recognized owner of said Lot 1 and Lot 2 and that he was referring the claim of the United States to the Pacific Abstract Title Company under the policy of title insurance made by them. Attorney F. M. DeNeffe was retained to represent Ethel Winans in connection with her rights under said policy of title insurance.

### XV.

That by letter, dated March 3, 1944, drafted by said F. M. DeNeffe and signed by Ethel Winans, a claim was made against the said Pacific Abstract Title Company under said policy on account of the defect in and the unmarketability of the title of the said Ethel Winans to said Lot 2. On or about April 3, 1944, Ethel Winans received the sum of \$3,000.00 from said company in full settlement and discharge of said claim; and as part of the consideration of said settlement the said company waived all rights and claims of every kind to said Lot 2 as against Ethel Winans, her heirs and assigns, the United States, the State of Oregon, and to any monies recovered or recoverable from Hood River County by reason of taxes theretofore paid on said Lot 2 and also endorsed on said policy of title insurance its continued liability as to the said Lot 1 in the sum of \$2,000.00.

### XVI.

That on Saturday, August 11, 1951, Paul Winans and Ethel Winans executed and delivered to the defendant Walter Stegmann, a document entitled "Option," a true copy of which is hereto annexed

as Exhibit C, and that Stegmann either acquired said option for Parkers or assigned it to Parkers on or about August 13, 1951, by a written document, a copy of which is hereto annexed, marked Exhibit G.

#### XVII.

That on August 15 or 16, 1951, plaintiff delivered to defendant Chet L. Parker a preliminary report as to the title of the said Lots 1 and 2 and accepted from him the sum of \$25.00 and that a copy of said preliminary report is hereto attached marked Exhibit D.

#### XVIII.

That on August 18, 1951, Parkers either personally or by their duly authorized agent exercised said Option by executing a written notice of election to purchase and paying the second installment on the purchase price of said property provided for in said Option, and a copy of which notice of election to purchase is hereto annexed marked Exhibit H.

#### XIX.

That on or about September 4, 1951, plaintiff issued to defendant Chet L. Parker a policy of purchaser's title insurance in the face amount of \$125,000 showing a fee simple title to said Lots 1 and 2 to be in Ethel Winans as of 8 o'clock a.m. August 30, 1951, and that a true copy of said policy of purchaser's title insurance is hereto annexed marked Exhibit E, and that plaintiff on August 30, 1951, accepted from said defendant the sum of \$405.00 in

payment of the balance of the premium on said policy of title insurance.

## XX.

That on September 11, 1951, Parkers caused a cashier's check in the sum of \$95,000 to be delivered to Paul and Ethel Winans and received delivery of the deed set forth in Exhibit B with the grantee's name left in blank, together with a refund in the sum of \$4,750 on account of additional acreage reserved to the grantors in said deed not provided for in said option.

## XXI.

That thereafter on or about September 12, 1951, plaintiff issued to Parkers at their request a policy of owner's title insurance in the principal amount of \$125,000 insuring a fee simple title to said Lots 1 and 2 in Chet L. Parker, subject to certain exceptions not herein material, and a copy of which policy is hereto annexed marked Exhibit F, and that no additional premium was charged or paid for said owner's policy of title insurance, and that at said time said purchaser's policy of title insurance was surrendered by Parker to plaintiff.

## XXII.

That at the time of delivery of said policy of owner's title insurance and surrender of said policy of purchaser's title insurance plaintiff notified Parkers that it had been advised by a representative of the United States Forest Service that the United States of America claimed ownership of said Lot 2, and that the giving of such notice to Parkers oc-

curred not earlier than September 12, 1952, nor later than September 16, 1951.

### XXIII.

That Parkers did not give plaintiff notice in writing or otherwise of the claim of ownership of the United States of America to the said Lot 2 prior to the time that plaintiff notified Parkers of that claim as set forth in Paragraph XXII above.

### XXIV.

That at all times herein mentioned subsequent to January, 1944, Winans' family knew that the title of Ethel Winans to Lot 2 was not marketable and that the United States claimed ownership thereto.

## Plaintiff's Claims Against Parkers

### First Count

### XXV.

That Stegmann at the time of acquiring said option was acting as an agent for an undisclosed principal, which undisclosed principal was the defendant Chet L. Parker.

### XXVI.

In the alternative that at all times between August 13, 1951, and September 11, 1951, Stegmann was the duly authorized and acting agent for an undisclosed principal, which undisclosed principal was defendant Chet L. Parker.

### XXVII.

Or, in the alternative that at all times between August 13, 1951, and September 11, 1951, Stegmann

was the duly authorized agent of defendant Chet L. Parker acting within the scope of his authority.

### XXVIII.

That Lois Parker on September 10 and 11, 1951, was the duly authorized agent for an undisclosed principal, which undisclosed principal was defendant Chet L. Parker.

### Concealment of Facts Material to the Risk

### XXIX.

That Parkers had notice of and knew of the claim of ownership of the United States to Lot 2 and of the loss collected by Ethel Winans under the prior policy of title insurance at the time of application for issuance of a preliminary report on the title to subject property, and at the time of application for the issuance of said policy of purchaser's title insurance.

### XXX.

That Parkers failed to disclose to plaintiff the fact that they had notice of a claim of ownership by the United States to Lot 2 at the time of application for issuance of said preliminary report and delivery thereof or at the time of application for issuance of said policy of purchaser's title insurance.

### XXXI.

That plaintiff did not know or learn of said claim of ownership of the United States to the said Lot 2 prior to the issuance of said preliminary report or

the issuance of said policy of purchaser's title insurance.

### XXXII.

That said claim of ownership was material to the risk to be insured and that plaintiff would not have issued said preliminary report or said policy of purchaser's title insurance if it had learned that the United States claimed ownership of the said Lot 2.

### Second Count, Fraudulent Concealment

### XXXIII.

That Parkers deliberately and intentionally concealed from plaintiff their knowledge of the fact that the United States claimed ownership to the said Lot 2 for the purpose of fraudulently inducing plaintiff to issue a policy of title insurance insuring a fee simple title to the said Lot 2 and assume liability for any loss or damage to Parkers on account of said claim of ownership.

### XXXIV.

That Parkers represented to plaintiff by words and conduct that they knew of no defect or possible defect in the title of Ethel Winans to the said Lot 2 at all times prior to the time when plaintiff notified Parkers of the claim of ownership by the United States.

### XXXV.

That in reliance thereon plaintiff issued said policy of purchaser's title insurance and thereafter issued said policy of owner's title insurance to Parkers.

## XXXVI.

That if Parkers had disclosed to plaintiff their knowledge of the claim of ownership of the United States to Lot 2, plaintiff would not have issued said purchaser's policy of title insurance or said owner's policy of title insurance.

## Third Count

## Breach of Condition of Policy

## XXXVII.

That Parkers had notice of a defect in the title to said Lot 2 by virtue of said claim of ownership of the United States between August 30, 1951, and September 10, 1951, and prior to the payment of the balance of the consideration for the purchase of said property to the Winans family and the receipt of the deed to said property.

## XXXVIII.

That Parkers failed to give notice in writing or otherwise of said defect described in the preceding paragraph in writing or otherwise, and thereby breached the condition of said policy of purchaser's title insurance which reads as follows: "Upon receipt of notice of any defect, lien or encumbrance hereby insured against, the insured shall forthwith notify the Company thereof in writing."

## XXXIX.

That if Parkers had given plaintiff such notice, plaintiff would have notified Parkers that plaintiff would refuse to hold itself liable for any additional

loss or damage to Chet L. Parker subsequent to the date that the said defendant Chet L. Parker received notice of such defect.

XL.

That if Parkers had given plaintiff such notice, the balance of the purchase price would not have been paid by Parkers to Winans, and any loss or damage sustained by Parkers would not have exceeded the consideration paid for assignment of said option.

Fourth Count

Breach of Policy Condition Respecting  
Claim for Loss

XLI.

That Parkers have failed and refused to furnish a full statement of their claimed loss under said policy in writing and have breached the following condition of said policy:

“Every claim for loss under this policy must be in writing, giving a full statement thereof and be delivered to the Company at its Home office within sixty (60) days after such final judicial determination, whereupon the loss hereunder shall be payable to the Insured on or before thirty (30) days.”

and have further breached their duty to co-operate with plaintiff in the exercise of its subrogation rights.

## Fifth Count

## Applicability of Policy, Exclusion No. 2

## XLII.

That during all of the times herein mentioned and specifically at the time of the grant of said option and the giving of the notice of election to purchase and the issuance of said policies of title insurance, the United States of America, through the Supervisor of the Mt. Hood National Forest was in possession or claiming to be in possession of said Lot 2.

Plaintiff's Alternative Claims Against Stegmann  
First Count—Mutual Mistake

## XLIII.

That during the negotiations leading up to the grant of the Option set forth in Exhibit C Winans family represented to Stegmann that they had a good marketable title to Lot 2.

## XLIV.

That said representations were false and that the Winans family knew they were false; that they failed to disclose this knowledge of the defect in said title and the facts pertaining thereto and that they intended that Stegmann rely thereon.

## XLV.

That Stegmann purchased said option for the sum of \$1,000.00 on August 8, 1951, in reliance upon said representations and did not know they were false; that said sum was obtained by Stegmann from

Parkers under a loan commitment previously granted to him.

#### XLVI.

That thereafter Stegmann represented to Parkers that he had a good and sufficient option set forth in Exhibit C to acquire title to Lot 1 and Lot 2 and the timber thereon and showed said options and property to Parkers and that he intended that Parkers rely thereon.

#### XLVII.

That in reliance upon said representation Parkers purchased said option from Stegmann on or about August 13, 1951, for a valuable consideration, the exact nature of which is uncertain and difficult of exact determination, and which consideration included in part the extinguishment of certain financial obligations of Stegmann; that at said time Stegmann was insolvent.

#### XLVIII.

That there is attached hereto marked Exhibit G a copy of said assignment; that Stegmann and Parkers entered into a collateral verbal agreement under which Stegmann was to pay Winans family the \$4,000.00 payment provided for in said option at time of exercise thereof, out of proceeds of said loan commitment.

#### XLIX.

That at the time of assignment of said option Parkers and Stegmann were each mutually mistaken as to the condition of the Winans title to Lot 2 and believed that said title was marketable.

## L.

That it would be inequitable and constitute unjust enrichment to permit Stegmann to retain the whole of said consideration.

## LI.

That the purpose of which Parkers purchased said option and the basis upon which the consideration for the assignment thereof was determined was the timber values located on said Lots 1 and 2.

## LII.

That a just basis for the proportionate abatement of the total purchase price of said option is the proportion that \$90,000 bears to \$125,000 times the value of the consideration received by Stegmann on account of the assignment and purchase of said option.

## Second Count

## Fraudulent Concealment

## LIII.

That Stegmann at the time he assigned said option to Parkers knew of the unmarketability of the Winans title to Lot 2, yet represented to Parkers that the title was marketable and failed to disclose to Parkers his knowledge of the claim of ownership of the United States or the basis therefor and intended that Parkers rely on said representations.

## LIV.

That Parkers purchased said option in reliance upon said representations and paid the consideration set forth in Paragraph XLVII above.

## LV.

That Parkers in further reliance on said representations advanced Stegmann the sum of \$4,000.00 with which to exercise said option and subsequently paid Winans family the sum of \$90,250.00 for the conveyance of said Lots 1 and 2 on September 11, 1951, some part of which may have been refunded to Parkers.

## LVI.

That the reasonable market value of Lot 1 less the acreage reserved by Ethel Winans as of September 11, 1951, was the sum of \$35,625.00.

## LVII.

That plaintiff has suffered damage as a direct result of the foregoing fraudulent conduct of defendant Stegmann in whatever it is found to be liable for to Parkers under said policies of title insurance on account of said defect in title to Lot 2.

Plaintiff's Claims for Declaratory Relief  
Against Stegmann

## LVIII.

That Parkers have demanded that plaintiff indemnify them from all loss or damage sustained by them on account of a claimed defect in the title to said Lot 2 in the total sum of \$125,000, together with costs and attorneys fees.

## LIX.

That plaintiff claims a right to indemnity in whole or part from Stegmann for any loss or damage for which it might be held liable to Parkers.

## LX.

That there are common disputed questions of fact and law in the controversy between plaintiff and Parkers and the controversy between plaintiff and Stegmann, which common questions of fact and law include the following:

(a) What is the legal effect of the grant of subject option and the exercise thereof.

(b) Whether Stegmann, in acquiring said option, was acting in his own behalf or as an agent for an undisclosed principal which was defendant Chet L. Parker.

(c) Whether or not, after the assignment of said option to Chet L. Parker, Stegmann acted as an agent for an undisclosed principal who was defendant Chet L. Parker, or as an agent for a disclosed principal, defendant Chet L. Parker, with limited authority, which limitation was known to Winans family.

(d) What was the reasonable market value of the consideration paid by Parker to Stegmann for the assignment of said option.

(e) What is the extent of the defect in or failure of title to Lot 2.

(f) What was the total amount of the loss or damage sustained by Parkers as a result of said defect or failure.

(g) What portion of said loss or damage is covered under said purchaser's or owner's policy

of title insurance and recoverable by Parkers from plaintiff.

(h) What was the reasonable market value of Lot 2 and what was the reasonable market value of Lot 1 less the reserve acreage at the time of subject transaction.

(i) What would be a just basis of abatement of a portion of the purchase price for the assignment of said option.

(j) Whether or not Ethel and Paul Winans disclosed to Stegmann and/or Parkers their knowledge relative to the defect in title to Lot 2 and the prior claim of loss under the Pacific Abstract Title Company insurance policy.

(k) Whether or not Stegmann disclosed to Parker his knowledge relative to the defect in title to Lot 2 and the prior claim of loss under the Pacific Abstract Title Company insurance policy.

## LXI.

That by reason of the foregoing, a bona fide justifiable controversy exists between plaintiff and Stegmann.

Wherefore, plaintiff prays that the court make and enter a judgment herein as follows:

1. Cancelling and setting aside and holding for nought the policies of purchaser's and owner's title insurance heretofore issued by plaintiff to defendant Chet L. Parker effective August 30, and September 12, 1951, respectively, and awarding defendant Chet

L. Parker judgment against plaintiff in the sum of \$430.00, together with legal interest on \$25.00 thereof from August 30, 1951, and on \$405.00 thereof from September 12, 1951, until paid.

2. Declaring that said policies of title insurance do not insure against any loss or damage sustained by Parkers on account of any defect in or unmarketability of the title to Lot 2.

3. Declaring that upon the exercise of the option set forth in Exhibit A by the giving of Notice of Election to Purchase and the payment of the second installment of the purchase price provided in said option, a binding executory contract of sale was created under which the sellers agreed to sell and convey marketable title to Lots 1 and 2, and the buyers agreed to purchase same according to the terms thereof.

4. Declaring whether Stegmann in acquiring said option was acting in his own behalf or as an agent for an undisclosed principal, Chet L. Parker.

5. Declaring whether or not after the assignment of said option to Chet L. Parker, Stegmann acted as an agent for an undisclosed principal, Chet L. Parker, or as an agent for a disclosed principal, Chet L. Parker, with limited authority, and if the latter, whether or not the limitation on authority was known to Paul and Ethel Winans.

6. Declaring what was the reasonable market value of the consideration paid by Parker to Stegmann for the assignment of said option.

7. Declaring what estate, title or interest in Lot 2 was conveyed to Chet L. Parker under the conveyance set forth in Exhibit B.

8. Declaring and determining what was the total amount of the loss or damage sustained by Parkers as a result of said defect in or unmarketability of the title to Lot 2.

9. Declaring and determining what was the reasonable market value of the estate, title or interest in Lot 2 conveyed to defendant Chet L. Parker by said deed set forth in Exhibit B and what was the reasonable market value of Lot 1 less the reserved acreage at the time of said conveyance.

10. Declaring and determining what would be a just basis for abatement of a portion of the purchase price or consideration paid for the assignment of said option.

11. Declaring and determining whether or not Ethel and Paul Winans disclosed to Stegmann and/or Parkers their knowledge relative to the defect in the title to Lot 2 and the prior claim of loss under the title insurance policy issued by Pacific Abstract Title Company.

12. Declaring and determining whether or not Stegmann disclosed to Parker his knowledge, if any, relative to the defect in the title to Lot 2 and the prior claim of loss under the title insurance policy issued by Pacific Abstract Title Company.

13. In the alternative, should the court deny plaintiff's prayer for cancellation of said policies of title insurance, then for a judgment declaring

and determining the amount of loss or damage sustained by Chet L. Parker by reason of said defect in or unmarketability of the title to Lot 2 insured under said policies of insurance, and awarding him judgment therefor and declaring and determining the extent, if any, to which Chet L. Parker is entitled to participate in any subrogation recovery against Stegmann.

14. In the alternative, should the court deny plaintiff's prayer for a cancellation of said policies of title insurance, then for a judgment in favor of plaintiff and against the defendant Walter Stegmann in an amount equal to the judgment entered in favor of Parkers and against plaintiff conditioned only upon payment thereof by plaintiff to Parkers.

15. In the alternative, should the court deny the prayer set forth in prayer 13 above, then for judgment in favor of plaintiff and against defendant Walter Stegmann for an amount equal to the proportionate abatement of the purchase price or consideration paid to Stegmann for the assignment of said option as determined under prayer 10 above, said judgment to be conditioned upon prior payment by plaintiff of the judgment entered against it and in favor of Parkers.

16. Awarding plaintiff such further and equitable relief as to the court may seem proper, together with its costs and disbursements herein.

GRIFFITH, PHILLIPS &  
COUGHLIN,

By /s/ JAMES K. BUELL.

## EXHIBIT B

## Bargain and Sale Deed

Know All Men by These Presents, that Ethel Winans, a single woman, of Hood River, Oregon, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration to me in hand paid by Chet L. Parker of Rt. 3, McMinnville, Oregon, has bargained and sold and by these presents does grant, bargain, sell and convey unto the said Chet L. Parker, and unto his heirs and assigns, all her right, title and interest in and to the following described real property in the County of Hood River, State of Oregon, to wit:

Government Lot One (1) and the Northeast quarter of the Northwest quarter, Section 16, Township 1 South, of Range 8 East, of the Willamette Meridian, containing 65.88 acres of land, more or less.

Saving and Excepting therefrom the following described tract of land: Starting at the existing Meander Corner at the Intersection of the Section line between Sections 9 and 16, Township 1 South, Range 8 E., W.M., with Lost Lake as set by the General Land Office and now being in nine inches of water, and then following in a Southwesterly direction along the meander line of Lost Lake to a 1" iron pipe set in the edge of the water, which point may also be reached by starting from said Meander Corner and running thence West 43° 00' South a distance of 100 feet to a point, thence West

42° 30' South a distance of 100 feet to a point, thence West 38° 10' South a distance of 100 feet to a point, thence West 38° 40' South a distance of 100 feet to a point, thence West 32° 10' South a distance of 100 feet to a point, thence West 30° 30' South a distance of 100 feet to the said 1" iron pipe set in the edge of the water on the shore line of Lost Lake, which 1" iron pipe is the true point of beginning for the land hereby excepted (and which said pipe has a 5" live cedar bearing tree bearing West 16° 00' North a distance of 22.05 feet and a 14" dead cedar bearing tree bearing West 07° 40' South a distance of 26.25 feet), thence West a distance of 200 feet to a 1" iron pipe (having a live Hemlock bearing tree 36" in diameter bearing South 07° 00' West a distance of 6.42 feet and a white fir bearing tree 8" in diameter bearing East 25° 00' North a distance of 13.17 feet), thence South a distance of 286.12 feet to a point, thence West a distance of 137.84 feet to a 1" iron pipe (having a live cedar bearing tree 24" in diameter bearing South 09° 00' West a distance of 3.33 feet), thence South 58° 30' West a distance of 425 feet, more or less, to a point on the West line of said Government Lot One which is 350 feet North of that 1" iron pipe set on the West line or southern extension of the West line of said Government Lot One and is 1320 feet South of the Northwest corner of said Lot One, thence South 350 feet, more or less, to the Southwest corner of said Lot One, thence East along the South line of said Government Lot One a distance of 848

feet, more or less, to the meander line of Lost Lake, thence in a Northerly direction following the meander line of Lost Lake a distance of 900 feet, more or less, to the point of beginning.

Also Saving and Reserving to the Grantor and her assigns from and over the lands hereby conveyed a right to cross and recross to the land reserved over the U. S. Forest Service Way Trail as the same now exists together with the right to construct a road along the same and not in excess of 121½ feet on each side of the center line of said Way Trail as the same now exists, and in the event that the grantee or his successors and assigns shall construct a roadway of comparable or better grade along the same general line that the grantor and her assigns may use such road and terminate the use of said Way Trail or the road which follows it. Grantor will place at the North line of the premises of the road if constructed by her a gate so as to prevent general public vehicular traffic and that both parties may use either roadway. That any trees removed by the grantor and her assigns in the construction of the road by her shall be piled along the road right of way and the grantor and her assigns shall have no claim to the trees so cut.

Also Reserving to the grantor and her assigns the right to cross the lands hereby conveyed with a domestic water pipe line at such place as will not interfere with any improvements that grantee may construct.

To Have and to Hold the above-described and

granted premises unto the said Chet L. Parker, and to his heirs and assigns forever.

In Witness Whereof, I have hereunto set my hand and seal on this 10th day of September, 1951.

[Seal]

ETHEL WINANS.

10th September, 1951.

State of Oregon,  
County of Hood River—ss.

Personally appeared the within-named Ethel Winans, a single woman, and acknowledged the foregoing instrument to be her voluntary act and deed. Before me:

W. VAWTER PARKER,

Notary Public for Oregon.

My commission expires March 7, 1954.

## EXHIBIT C

### Option

On or before seven days after date hereof, for and in consideration of the sum of \$1000.00, the receipt of which is hereby acknowledged, I, Paul Winans, acting as the duly authorized agent of Ethel Winans, et al., hereinafter designated as The Sellers, agree and promise to sell to Walter Stegmann, his heirs or assigns, hereinafter designated The Buyer, at his option, the following described real property. NW $\frac{1}{4}$ , NE $\frac{1}{4}$ , (Lot 1) containing 25.88 acres, and

NE $\frac{1}{4}$ , NW $\frac{1}{4}$  (Lot 2), containing 40 acres, more or less, in Section 16, Township 1 South, Range 8 East, Willamette Meridian in Hood River County, Oregon, excepting 8.88 acres located along and adjacent to the meandered water shore line of Lost Lake and which shall be selected, measured and staked out on boundaries mutually agreed upon on or before the expiration date of this option.

For the total sum of \$100,000.00 to be paid as follows:

Credit by check subject to collection paid on option herewith.....	\$ 1,000.00
Payment on even date of written notice of election of The Buyer to purchase under this option .....	4,000.00
Final payment to be made on even date of delivery of deed to above-described land by The Seller on or before ninety days from date hereof.....	95,000.00
	<hr/>
	\$100,000.00

For which The Seller agrees to deliver a good and sufficient deed of conveyance showing title free and clear of all mortgage, contract, judgment or tax liens, conveying to The Buyer all the right, title and interest of The Sellers to the above-described real property.

/s/ PAUL WINANS,  
ETHEL WINANS.

Approved,

.....

## EXHIBIT D

Title and Trust Company  
Title and Trust Building  
325 S.W. Fourth Avenue  
Portland 4, Oregon

Hood River County Branch  
Hood River, Oregon

Order No. HR12-987

August 15, 1951.

Chet L. Parker,  
106 E. 33 Street,  
Vancouver, Washington.

Dear Sir:

We are prepared to issue title insurance policy in the usual form as of August 15, 1951, at 8:00 a.m., insuring the title to

That tract of land in the County of Hood River and State of Oregon, described as follows:

Government Lot 1 and the Northeast quarter of the Northwest quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian,

in

Ethel Winans  
fee simple estate,

Subject to the usual printed exceptions, and

1. Mortgage, including the terms and provisions

thereof, executed by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated January 12, 1923, recorded on January 17, 1923, in Book 15, page 507, Mortgage Records Hood River County, given to secure the payment of a note for \$1000.00 with interest thereon.

2. Mortgage, including the terms and provisions thereof, executed by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated July 12, 1936, recorded on November 24, 1936, in Book 24, page 50, Mortgage Records Hood River County, given to secure the payment of a note for \$541.80 with interest thereon.

3. Suit to foreclose indebtedness above evidenced, W. B. Combs vs. W. R. Winans, et al., No. 3203, filed August 5, 1946, in State Circuit Court for Hood River County. Personal service was had upon all defendants, including Ethel Winans, on August 6, 1946. Following return of service, nothing more appears in the Court's file. Said suit should be dismissed by order of Court.

Note 1: 1950-51 and prior taxes have been paid. Said 1950-51 taxes amounted to \$23.87.

Note 2: We find no unsatisfied judgments of record against Chet L. Parker as of the date hereof.

Very truly yours,

TITLE AND TRUST COMPANY, HOOD RIVER  
COUNTY BRANCH,

By EDW. E. MILLER, JR.,  
Assistant Secretary.

EEM:hb

## EXHIBIT E

Title and Trust Company  
Title and Trust Building  
325 S.W. Fourth Avenue  
Portland 4, Oregon

(Copy)

## Purchaser's Title Insurance Policy

\$125,000.00      Premium: \$430.00      No. HR12-987

For value, Title and Trust Company, a corporation (incorporated under the laws of the State of Oregon and duly authorized by the State Insurance Commissioner to insure titles in said state), hereinafter called the Company,

Does Hereby Insure

subject to the annexed conditions, hereby made a part of this policy,

Chet L. Parker

heirs and devisees (or if a corporation, its successors) hereinafter called the Insured, against loss or damage not exceeding One Hundred Twenty-Five Thousand Dollars, which the insured may sustain by reason of any defect in or unmarketability of the title of

Ethel Winans

hereinafter referred to as the Seller, to all the estate or interest in the premises specified and hereinafter described or by reason of liens or incumbrances

charging the same at the date of this policy; saving and excepting, and this policy does not insure against loss or damage by reason of any estate or interest, defect, lien, incumbrance or objection hereinafter set forth in the written or printed exceptions contained in this policy.

Any loss under this policy is to be established in the manner provided in said conditions and shall be paid upon compliance by the Insured with and as prescribed in said conditions, and not otherwise.

In Witness Whereof Title and Trust Company has caused these presents to be duly signed by its President or Vice-President, attested by its Secretary or Assistant Secretary and its corporate seal affixed this 30th day of August, 1951, at 8:00 o'clock a.m.

[Seal]

TITLE AND TRUST  
COMPANY,

By /s/ FRANKLIN G. GRIFFITH,  
President.

Attest:

(GERALD B. GREY),  
Assistant Secretary.

Schedule A

The Estate or interest covered by this policy:  
fee simple estate.

Description of the tract of land the title to which  
is insured by this policy:

That tract of land in the County of Hood River and State of Oregon, described as follows:

Government Lot 1 and the Northeast quarter of the Northwest quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian.

### Schedule B

This policy does not insure against:

1. Any state of facts which an accurate survey and inspection would show; roads, ways and easements not established of record; the existence of county roads; water rights and water locations.
2. Rights or claims of persons in possession, or claiming to be in possession, not shown of record; material or labor liens of which no notice is of record.
3. Matters relating to assessments preceding the same becoming fixed and shown as a lien; taxes not yet payable; matters relating to vacating, opening or other changing of streets or highways preceding the final termination of the same.
4. Provisions and effect of any law or ordinance enacted for the purpose of **regulating occupancy or** use of said land or any building or structure thereon.
5. Mortgage, including the terms and provisions thereof, executed by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated January 12, 1923, recorded on January 17, 1923, in Book 15, page 507, Mortgage Records Hood River County,

given to secure the payment of a note for \$1000.00 with interest thereon.

6. Mortgage, including the terms and provisions thereof, executed by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated July 12, 1936, recorded on November 24, 1936, in Book 24, page 50, Mortgage Records Hood River County, given to secure the payment of a note for \$541.80 with interest thereon.

7. Suit to foreclose indebtedness above evidenced, W. B. Combs vs. W. R. Winans, et al., No. 3203, filed August 5, 1946, in State Circuit Court for Hood River County. Personal service was had upon all defendants, including Ethel Winans, on August 6, 1946.

### Conditions

Upon receipt of notice of any defect, lien or incumbrance hereby insured against, the Insured shall forthwith notify the Company thereof in writing. In case any suit, action or proceeding is commenced to which the Insured is a party and which may result in loss under this policy, the Insured shall immediately after learning thereof notify the Company in writing, and within ten (10) days after service of process upon him secure to the Company the right to defend such suit, action or proceeding in the name of the Insured, so far as necessary to protect the Insured, and shall render all reasonable assistance in such defense. The Company will defend such suit, action or proceeding at its own cost, reserving, however, the option of settling the claim

or paying this policy in full at any time. But the Company shall in no case be liable for any costs or expense incurred by the Insured in such litigation without its consent.

In the event of final judicial determination by a Court of competent jurisdiction, under which the Insured is dispossessed or deprived of the real estate covered hereby, or his estate or interest insured is impaired by reason of any adverse interest, lien or incumbrance hereby insured against, or, if this policy covers a mortgagee's interest, if such final judicial determination shall defeat or impair the mortgagor's title to all or any part of the mortgaged premises or establish the priority to the mortgage of a lien or incumbrance not excepted in this policy, claim may be made hereunder, provided, the conditions have been in all ways complied with. Every claim for loss under this policy must be in writing, giving a full statement thereof, and be delivered to the Company at its Home Office within sixty (60) days after such final judicial determination, whereupon the loss hereunder shall be payable to the Insured on or before thirty (30) days.

The Company may at any time pay this policy in full, whereupon all liability of the Company shall terminate. The total liability under this policy, exclusive of costs, shall in no case exceed the face of the policy, and every payment of the Company shall reduce the policy by the amount paid. When the Company shall have paid a loss under this policy it

shall be subrogated to all rights and remedies which the Insured may have against any person or property in respect of such claims, or would have if this policy had not been issued, and the Insured shall forthwith transfer all such rights to the Company accordingly. If the payment made by the Company does not cover the loss of the Insured, then such subrogation of the Company shall be proportionate. Or, the Company may, in case this policy covers a mortgagee's interest only, pay the Insured the entire mortgage indebtedness, with interest at the rate specified in the mortgage and thereupon the Insured shall assign and transfer to the Company the mortgage and the indebtedness thereby secured, with all instruments evidencing or securing the same, or shall convey to the Company any estate lawfully vested in the Insured by virtue of foreclosure of the mortgage, and all liability of the Company shall thereupon terminate.

Where the Insured, in good faith, shall have entered into an enforceable contract, in writing, to sell the Insured estate or interest, and the title shall have been rejected because of some defect or incumbrance not excepted in this policy, and notice in writing of such rejection shall have been given to this Company within ten days thereafter, for thirty days after receiving such notice this Company shall have the option of paying the loss, of which the Insured must present proper proof, or of maintaining or defending either in its own name or at its option in the name of the Insured some proper action or proceeding,

begun or to be begun in a court of competent jurisdiction, for the purpose of determining the validity of the objection alleged by the vendee to the title, and only in case of a final determination is made in such action or proceeding, sustaining the objection to the title, shall this Company be liable on this policy.

If this policy covers a mortgagee's interest only, discharge of the mortgage, otherwise than through foreclosure thereof, or by deed in lieu of foreclosure, shall terminate this policy and all liability of the Company hereunder; but if any Insured acquires said land, or any part thereof, by foreclosure or in any other legal manner in satisfaction of said mortgage indebtedness, or any part thereof, then this policy shall continue in force in favor of such Insured and each successor in interest in ownership subject to all of the conditions and stipulations hereof applicable to an owner of land.

Nothing contained in this policy shall be construed as an insurance against defects or incumbrances created subsequent to the date hereof.

EXHIBIT F

Title and Trust Company  
Title and Trust Building  
325 S.W. Fourth Avenue  
Portland 4, Oregon

(Duplicate)

Owner's Title Insurance Policy

\$125,000.00      Premium \$430.00      No. HR12-987

For value, Title and Trust Company, a corporation (incorporated under the laws of the State of Oregon and duly authorized by the State Insurance Commissioner to insure titles in said state), hereinafter called the Company,

Does Hereby Insure

subject to the annexed conditions, hereby made a part of this policy,

Chet L. Parker

heirs and devisees (or if a corporation, its successors) hereinafter called the Insured, against loss or damage not exceeding One Hundred Twenty-five Thousand Dollars, which the Insured may sustain by reason of any defects in or unmarketability of the Insured's title to all the estate or interest in the premises specified and hereinafter described or by reason of liens or incumbrances charging the same at the date of this policy, saving and excepting, and this policy does not insure against loss or damage by reason of any estate or interest, defect, lien, in-

cumbrance or objection hereinafter set forth in annexed Schedule B.

Any loss under this policy is to be established in the manner provided in said conditions and shall be paid upon compliance by the Insured with and as prescribed in said conditions, and not otherwise.

In Witness Whereof Title and Trust Company has caused these presents to be duly signed by its President or Vice-President, attested by its Secretary or Assistant Secretary and its corporate seal affixed this 12th day of September, 1951, at 8:00 o'clock a.m.

TITLE AND TRUST  
COMPANY,

By /s/ FRANKLIN G. GRIFFITH,  
President.

Attest:

/s/ EDW. E. MILLER, JR.,  
Assistant Secretary.

Schedule A

(Duplicate)

The Estate or interest covered by this policy:

Fee simple estate.

Description of the tract of land the title to which is insured by this policy:

That tract of land in the County of Hood River and State of Oregon, described as follows:

Government Lot 1 and the Northeast quarter of the Northwest quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian; Saving and Excepting Therefrom, the following described tract of land: Starting at the existing Meander corner at the intersection of the Section line between Sections 9 and 16, Township 1 South, Range 8 East, of the Willamette Meridian, with Lost Lake as set by the General Land Office and now being in nine inches of water, and then following in a Southwesterly direction along the meander line of Lost Lake to a 1-inch iron pipe set in the edge of the water, which point may also be reached by starting from said Meander corner and running thence West  $43^{\circ} 30'$  South a distance of 100 feet to a point, thence West  $42^{\circ} 30'$  South a distance of 100 feet to a point, thence West  $38^{\circ} 10'$  South a distance of 100 feet to a point, thence West  $38^{\circ} 40'$  South a distance of 100 feet to a point, thence West  $32^{\circ} 10'$  South a distance of 100 feet to a point, thence West  $30^{\circ} 30'$  South a distance of 100 feet to the said 1-inch iron pipe set in the edge of the water on the shore line of Loast Lake, which 1-inch iron pipe is the true place of beginning for the land hereby excepted (and which said pipe has a 5-inch live cedar bearing tree bearing West  $16^{\circ} 00'$  North a distance of 22.05 feet and a 14-inch dead cedar bearing tree bearing West  $07^{\circ} 40'$  South a distance of 26.25 feet), thence West a distance of 200 feet to a 1-inch iron pipe (having a live Hemlock bearing tree 36 inches in diameter bearing South  $07^{\circ} 00'$  West a distance of 6.42 feet and a white fir bearing tree 8 inches in

diameter bearing East  $25^{\circ} 00'$  North a distance of 13.17 feet), thence South a distance of 286.12 feet to a point, thence West a distance of 137.84 feet to a 1-inch iron pipe (having a live cedar bearing tree 24 inches in diameter bearing South  $09^{\circ} 00'$  West a distance of 3.33 feet), thence South  $58^{\circ} 30'$  West a distance of 425 feet, more or less, to a point on the West line of said Government Lot One which is 350 feet North of that 1-inch iron pipe set on the West line or southern extension of the West line of said Government Lot One and is 1320 feet South of the Northwest corner of said Lot One, thence South 350 feet, more or less, to the Southwest corner of said Lot One, thence East along the South line of said Government Lot One a distance of 848 feet, more or less, to the meander line of Lost Lake, thence in a Northerly direction following the meander line of Lost Lake a distance of 900 feet, more or less, to the place of beginning.

#### Schedule B

(Duplicate)

This policy does not insure against:

1. Any state of facts which an accurate survey and inspection would show; roads, ways, and easements not established of record; the existence of county roads; water rights and water locations.

2. Rights or claims of persons in possession, or claiming to be in possession, not shown of record; material or labor liens of which no notice is of record.

3. Matters relating to assessments preceding the same becoming fixed and shown as a lien; taxes not yet payable; matters relating to vacating, opening or other changing of streets or highways preceeding the final termination of the same.

4. Provisions and effect of any law or ordinance enacted for the purpose of regulating occupancy or use of said land or any building or structure thereon.

5. The 1951-52 taxes, \$27.02.

6. No means of ingress and egress to and from these premises by any public road or highway or by any private easement of record.

7. Reservations contained in deed from Ethel Winans to Chet L. Parker, recorded September 11, 1951, in Book 46 under instrument No. 80451, Deed Records Hood River County.

#### Conditions

(Duplicate)

Upon receipt of notice of any defect, lien or incumbrance hereby insured against, the Insured shall forthwith notify the Company thereof in writing. In case any suit, action or proceeding is commenced to which the Insured is a party and which may result in loss under this policy, the Insured shall immediately after learning thereof notify the Company in writing, and within ten (10) days after service of process upon him secure to the Company the right to defend such suit, action or proceeding in the name

of the Insured, so far as necessary to protect the Insured, and shall render all reasonable assistance in such defense. The Company will defend such suit, action or proceeding at its own cost, reserving, however, the option of settling the claim or paying this policy in full at any time. But the Company shall in no case be liable for any costs or expense incurred by the Insured in such litigation without its consent.

In the event of final judicial determination by a Court of competent jurisdiction, under which the Insured is dispossessed or deprived of the real estate covered hereby, or his estate or interest insured is impaired by reason of any adverse interest, lien or incumbrance hereby insured against, or, if this policy covers a mortgagee's interest, if such final judicial determination shall defeat or impair the mortgagor's title to all or any part of the mortgaged premises or establish the priority to the mortgage of a lien or incumbrance not excepted in this policy, claim may be made hereunder, provided, the conditions have been in all ways complied with. Every claim for loss under this policy must be in writing, giving a full statement thereof, and be delivered to the Company at its Home Office within sixty (60) days after such final judicial determination, whereupon the loss hereunder shall be payable to the Insured on or before thirty (30) days.

The Company may at any time pay this policy in full, whereupon all liability of the Company shall terminate. The total liability under this policy, ex-

clusive of costs, shall in no case exceed the face of the policy, and every payment of the Company shall reduce the policy by the amount paid. When the Company shall have paid a loss under this policy it shall be subrogated to all rights and remedies which the Insured may have against any person or property in respect of such claims, or would have if this policy had not been issued, and the Insured shall forthwith transfer all such rights to the Company accordingly. If the payment made by the Company does not cover the loss of the Insured, then such subrogation of the Company shall be proportionate. Or, the Company may, in case this policy covers a mortgagee's interest only, pay the Insured the entire mortgage indebtedness, with interest at the rate specified in the mortgage and thereupon the Insured shall assign and transfer to the Company the mortgage and the indebtedness thereby secured, with all instruments evidencing or securing the same, or shall convey to the Company any estate lawfully vested in the Insured by virtue of foreclosure of the mortgage, and all liability of the Company shall thereupon terminate.

Where the Insured, in good faith, shall have entered into an enforceable contract, in writing, to sell the Insured estate or interest, and the title shall have been rejected because of some defect or incumbrance not excepted in this policy, and notice in writing of such rejection shall have been given to this Company within ten days thereafter, for thirty days after receiving such notice this Company shall

have the option of paying the loss, of which the Insured must present proper proof, or of maintaining or defending either in its own name or at its option in the name of the Insured some proper action or proceeding, begun or to be begun in a court of competent jurisdiction, for the purpose of determining the validity of the objection alleged by the vendee to the title, and only in case of a final determination is made in such action or proceeding, sustaining the objection to the title, shall this Company be liable on this policy.

If this policy covers a mortgagee's interest only, discharge of the mortgage, otherwise than through foreclosure thereof, or by deed in lieu of foreclosure, shall terminate this policy and all liability of the Company hereunder; but if any Insured acquires said land, or any part thereof, by foreclosure or in any other legal manner in satisfaction of said mortgage indebtedness, or any part thereof, then this policy shall continue in force in favor of such Insured and each successor in interest in ownership, subject to all of the conditions and stipulations hereof applicable to an owner of land.

Nothing contained in this policy shall be construed as an insurance against defects or incumbrances created subsequent to the date hereof.

# EXHIBIT G

August 13, 1951.

For the full sum of \$25,000.00 (twenty-five thousand dollars) which is hereby acknowledged, I assign all my right, title and interest in that certain option between myself as Buyer, and Ethel Winans, et al., with Paul Winans acting as agent, to Chet L. Parker.

The property valuation on the described property is as follows:

NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 16, Twp. 1 S., R.

8 E., W.M. ....\$ 90,000.00

25.88 acs., Lot 1, Sec. 16, Twp. 1 S., R.

8 E., W.M. .... 35,000.00

---

\$125,000.00

WALTER STEGMANN.

# EXHIBIT H

Notice of Election to Purchase

Hood River, Oregon.

August 18, 1951.

Paul Winans, Agent,

Ethel Winans, et al.

This will serve to notify you that I herewith elect to purchase the real property situated in Section 16, Township 1 South; Range 8 East, W. M. as set

out and described in that certain option granted to me by yourselves on date of August 11, 1951, in consideration of payment of the total purchase price of \$100,000 (One Hundred Thousand Dollars), to be paid to you at the time and dates as specified under the terms of said option.

WALTER STEGMANN.

Acknowledgment of Notice

Walter Stegmann,  
RFD, No. 3,  
McMinnville, Oregon.

Receipt of your check of even date hereof in the amount of \$4000.00 (Four Thousand Dollars), subject to collection together with notice constituting your election to purchase is hereby acknowledged.

It is further mutually understood and agreed that time period for measuring and staking out 8.88 acres to be retained by the Sellers is hereby extended date of on or before August 26, 1951.

PAUL WINANS,  
ETHEL WINANS.

Approved:

WALTER STEGMANN.

Service of copy acknowledged.

[Endorsed]: Filed December 29, 1952.

[Title of District Court and Cause.]

ANSWER AND COUNTERCLAIM OF DEFENDANTS PARKER TO AMENDED COMPLAINT

Come Now the defendants Chet L. Parker and Lois M. Parker and in answer to plaintiff's amended complaint, admit, deny and allege:

I.

These answering defendants admit the allegations of paragraphs I, II, III and IV of said amended complaint.

II.

Answering the allegations of paragraph V of said amended complaint, these defendants admit that the statute referred to therein may be construed as set forth in said paragraph, but that the legal conclusion claimed by plaintiff is subject to exceptions.

III.

These answering defendants admit the allegations of paragraph VI of said amended complaint.

IV.

Answering the allegations of paragraph VII, these answering defendants admit that Exhibit A attached to said amended complaint discloses a United States Government survey of a portion of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian and deny the remaining allegations of said paragraph VII.

## V.

These answering defendants admit the allegations of paragraphs VIII and IX of said amended complaint.

## VI.

Answering the allegations of paragraph X, these defendants admit that the matters set forth in paragraphs VII, VIII and IX are not matters of record in such of the official records of Hood River County, Oregon, in which documents affecting title to real property are placed of record, pursuant to the recording act of the State of Oregon, and deny the remainder thereof.

## VII.

Defendants admit the allegations of paragraphs XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII and XXIV of said amended complaint, except those allegations in which it is alleged that defendant Walter Stegmann was an agent of these defendants, or either of them, which allegations these defendants deny.

## VIII.

These defendants deny each and every allegation, matter and thing contained in paragraphs XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV and XXXVI of said amended complaint, except they admit that they did not advise plaintiff respecting the claim of ownership of the United States prior to the time they received their owner's title insurance policy, they themselves having no notice thereof until notified of said fact by plaintiff.

IX.

These defendants deny the allegations of paragraph XXXVII of said amended complaint.

X.

These defendants admit that prior to September 10, 1951, they did not give written notice to plaintiff respecting said defect and deny the remaining allegations of paragraph XXXVIII.

XI.

These defendants have not sufficient knowledge or information on which to form a belief regarding the allegations of paragraph XXXIX of said amended complaint and therefore deny the same.

XII.

These defendants deny the allegations of paragraph XL of said amended complaint.

XIII.

These defendants deny the allegations of paragraph XLI of said amended complaint.

XIV.

These defendants deny the allegations of paragraph XLII of said amended complaint.

XV.

On information and belief, these defendants admit the allegations of paragraphs XLIII, XLIV, and XLV of said amended complaint.

## XVI.

These defendants admit the allegations of paragraphs XLVI and XLVII of said amended complaint except they deny that there were any express representations respecting the sufficiency of the option referred to therein and also deny that at the time of the purchase of said option there was any agreement that the consideration therefor included the extinguishment of certain financial obligations; and allege they have not sufficient knowledge or information on which to form a belief respecting the solvency or insolvency of defendant Stegmann at said time.

## XVII.

These defendants admit the allegations of paragraphs XLVIII, XLIX and L of said amended complaint.

## XVIII.

Answering the allegations of paragraphs LI and LII, these defendants deny the basis upon which the consideration for the assignment was determined was otherwise than by arm's length negotiations or that the purpose of these defendants in purchasing the same was other than to endeavor to make a profit upon a resale.

## XIX.

Answering the allegations of paragraph LIII, these defendants have not sufficient knowledge or information on which to form a belief as to whether defendant Stegmann had knowledge of the unmarketability of the title to Lot 2, deny that there were any express representations with respect to

said title; admit that Stegmann did not advise these defendants with respect to the claim of ownership by the United States.

## XX.

Answering the allegations of paragraph LIV, these defendants say that they purchased said option in reliance upon their bona fide belief that they would obtain good title to the property described therein and on such assumption paid the consideration therefor.

## XXI.

Answering the allegations of paragraph LV, these defendants state that they made the payments therein set forth in reliance on plaintiff's preliminary report and purchaser's title insurance policy and upon their belief that they would obtain good title to said Lots 1 and 2, and deny the remaining allegations of said paragraph LV.

## XXII.

Answering the allegations of paragraphs LVI and LVII, these defendants admit that plaintiff has suffered damage but have not sufficient knowledge or information on which to form a belief as to whether conduct of defendants, fraudulent or otherwise, was a cause thereof, and deny the remaining allegations of said paragraphs LVI and LVII.

## XXIII.

Defendants admit the allegations of paragraphs LVIII and LIX of said amended complaint.

## XXIV.

Answering the allegations of paragraph LX, these defendants admit that there are some common disputed questions of fact and law in the controversies between plaintiff and the Parkers and between plaintiff and Stegmann, and deny the remaining allegations of said paragraph.

## XXV.

These defendants admit the allegations of paragraph LXI.

## Counterclaim

Further answering plaintiff's amended complaint and as a counterclaim against plaintiff, defendant Chet L. Parker alleges:

## I.

This defendant and counterclaimant is a resident of the State of Washington, and plaintiff is a corporation organized and existing under the laws of the State of Oregon and diversity of citizenship exists between plaintiff and this defendant.

## II.

The amount in controversy between plaintiff and defendant involved in this counterclaim exceeds the sum and value of \$3,000.00, exclusive of interest and costs.

## III.

On or about the . . day of August, 1951, this defendant applied to the plaintiff for a title report covering the real property described in plaintiff's complaint. referred to therein as Lots 1 and 2.

## IV.

Pursuant to said application, plaintiff, on or about August 15, 1951, delivered to said defendant its preliminary report and said defendant paid to plaintiff the sum of \$25.00 as consideration therefor, that a copy of said preliminary report is attached to plaintiff's amended complaint marked Exhibit D.

## V.

Thereafter and on or about September 4, 1951, pursuant to an application therefor made by said defendant on August 30, 1951, plaintiff executed and delivered to this defendant its purchaser's policy of title insurance insuring defendant against loss arising by reason of any defect in the title to said Lots 1 and 2 of defendant Ethel Winans, with certain exceptions set forth therein and none of said exceptions had any reference to any claim whatsoever of the United States of America. A true copy of said title insurance policy is attached to plaintiff's amended complaint marked Exhibit E, and by reference thereto is hereby made a part hereof. On August 30, 1951, said defendant paid to plaintiff the sum of \$405.00 in payment of the balance of the premium on said policy of title insurance.

## VI.

In reliance upon said title report and upon said purchaser's policy of title insurance, this defendant purchased the real property described therein and on September 11, 1951, paid to defendant Ethel Winans the sum of \$95,000.00, receiving a refund

of \$4,750.00 for property excepted from the conveyance.

## VII.

On or about the 11th day of September, 1951, this defendant advised plaintiff that he had obtained a conveyance of said tracts and desired an owner's policy of title insurance, and pursuant to said request on the 14th day of September, 1951, defendant exchanged said purchaser's policy of title insurance for an owner's policy of title insurance executed and delivered to him by plaintiff, a copy of which said owner's policy of title insurance is attached to plaintiff's amended complaint marked Exhibit F and is hereby made a part of this answer and counterclaim. Immediately prior to said exchange and the delivery of said owner's policy of title insurance to this defendant, plaintiff advised this defendant that it had learned that the United States Government claimed title to said Lot 2.

## VIII.

This defendant paid to plaintiff in full payment of the premium for said title insurance policies the sum of \$430.00, which said sum was paid to and accepted and retained by plaintiff in full payment of said premium prior to the 11th day of September, 1951.

## IX.

On or about the 27th day of September, 1951, this defendant was notified by the United States of America through its Department of Agriculture, Forest Service, that said Lot 2 had never passed

from federal ownership, was a part of the Mt. Hood National Forest, and was the property of the United States of America.

### X.

Immediately after receiving said notification from the United States of America, defendant gave notice thereof to plaintiff. Thereafter, certain negotiations were had between plaintiff and defendant and on or about the 23rd day of October, 1951, this defendant, Chet Parker, made demand upon plaintiff for the payment of \$125,000.00 under said policy and this defendant alleges that said sum is less than the full amount of this defendant's loss, and is the amount of said loss within the limits of said policy arising by reason of the lack of title to said Lot 2.

### XI.

Said real property, referred to in plaintiff's complaint as Lot 2, is of a reasonable value in excess of \$125,000.00 and defendant's loss and damage under and by reason of the aforesaid breach of the terms of said policy of title insurance is the full sum of \$125,000.00.

### XII.

This defendant has performed each and all the terms, covenants and conditions on his part to be kept and performed but notwithstanding repeated demands, plaintiff has refused and does still refuse to pay to this defendant said sum of \$125,000.00 and there is now due and owing and wholly unpaid from plaintiff to defendant the sum of \$125,000.00 with

interest thereon at the rate of 6% per annum from the 27th day of September, 1951, until paid.

### XIII.

The sum of \$12,500.00 is a reasonable sum to be allowed this defendant as an attorney's fee in this action.

Wherefore, defendants Chet L. Parker and Lois M. Parker pray that the Court determine and finally adjudicate the title to said Lot 2, whether the same is in the United States of America or in defendant Chet L. Parker; and in the event the court determines that said title is in the United States of America, that judgment be granted to defendant Chet L. Parker against plaintiff in the sum of \$125,000.00 together with interest thereon at the rate of 6% per annum from the 27th day of September, 1951, until paid, together with the further sum of \$12,500.00 attorney's fees and his costs and disbursements incurred herein.

These answering defendants pray for such other and further and different relief as to the Court shall seem just and equitable.

CAKE, JAUREGUY & TOOZE,

By /s/ NICHOLAS JAUREGUY,  
Attorneys for Defendants Chet L. Parker and Lois  
M. Parker.

Service of copy acknowledged.

[Endorsed]: Filed December 29, 1952.

In the District Court of the United States,  
for the District of Oregon

Civil No. 6242

TITLE AND TRUST COMPANY, a Corporation,  
Plaintiff and Third-Party Plaintiff,

vs.

CHET L. PARKER, LOIS M. PARKER, and  
WALTER STEGMANN,

Defendants,

vs.

PAUL WINANS, ETHEL WINANS, ROSS M.  
WINANS, AUDUBON WINANS, and LIN-  
NAEUS WINANS,

Third-Party Defendants.

### THIRD-PARTY COMPLAINT

Comes now the plaintiff and for cause of action  
against the third-party defendants, alleges:

#### I.

Plaintiff has filed an Amended Complaint against  
defendants Chet L. Parker, Lois M. Parker and  
Walter Stegmann, a copy of which is hereto an-  
nexed, marked Exhibit I and incorporated herein,  
the same as though fully set forth.

#### II.

That defendants Chet L. Parker and Lois M.

Parker have filed an Answer and Counterclaim against plaintiff, a copy of which is hereto annexed, marked Exhibit J and incorporated herein, the same as though fully set forth.

### III.

That the third-party defendants Paul Winans, Ross M. Winans, Audubon Winans, Linnaeus Winans and Ethel Winans are sons and daughter of W. R. Winans and Mary Winans, husband and wife, deceased, and have claimed an interest in the property described in said Amended Complaint between the dates December 29, 1943, and September 11, 1951, and have received portions of the purchase price for said property paid by Parkers.

### IV.

That plaintiff is advised that the sum of \$12,500 of the total purchase price paid to Paul Winans and and Ethel Winans as hereinafter described, has been distributed to other individuals not made a party hereto and that the interest of said individuals is derivative of and subject to the interest of Paul Winans and Ethel Winans herein.

### V.

That Paul Winans was acting on behalf of himself and of the third-party defendants Ross M. Winans, Audubon Winans, Linnaeus Winans and Ethel Winans in connection with the negotiations which led up to and culminated in the sale of said Lot 1 and Lot 2 and the delivery of the deed there-

for on September 11, 1951, as hereinafter described and so acted with the knowledge and consent of said named members of Winans family.

### First Count—Fraud

#### VI.

That during the negotiations leading up to the grant of the option set forth in Exhibit C, third-party defendants represented to Stegmann that they had a good marketable title to Lot 2.

#### VII.

That on or about August 13, 1951, Stegmann assigned said option to Parkers for a valuable consideration by an instrument in writing annexed to said Amended Complaint, marked Exhibit G. That on or about August 18, 1951, written notice of election to exercise said option and purchase the property covered thereby was given third-party defendants and the \$4,000.00 payment provided therein paid at said time, and that on September 11, 1951, Parkers caused the balance of the purchase price of the property covered by said option less the sum of \$4,750.00 which was agreed upon between Parkers and third-party defendants as the value of the additional acreage reserved by the latter, to be paid to the third-party defendants, to wit: the sum of \$90,250.00 and received therefor the deed, a copy of which is annexed to said Amended Complaint, marked Exhibit B.

#### VIII.

That during all of the times set forth in the

preceding paragraph, third-party defendants represented to Parkers and/or Stegmann as the agent of Parkers that Ethel Winans had a good marketable title to the said Lot 2 and made said representations with the intent that Parkers and/or Stegmann rely thereon.

#### IX.

That during all of said times, third-party defendants knew that said representations were false and knew the reasons and facts pertaining to the defect of the title of Ethel Winans to said Lot 2 and to the basis of the claim of the United States to ownership of said property.

#### X.

That Parkers relied on said representations of the third-party defendants in acquiring said option and in the exercise thereof and in the purchase of said property and did not learn or know of the defect in the title to Lot 2 until after the final payment of the purchase price and the receipt of the deed therefor.

#### XI.

That the agreed valuation of Lot 1 as between Parkers and third-party defendants was the sum of \$35,625.00 and that Parkers acquired good title to said Lot 1.

#### XII.

That Parkers and thereby plaintiff were damaged on account of said defect in title to Lot 2 and said fraudulent misrepresentations in the sum of \$. . . . .

Second Count

Abatement of Purchase Price on Account of Fraud

XIII.

That there was a total failure in the title of Ethel Winans to Lot 2 and it would be inequitable and constitute unjust enrichment to permit third-party defendants to retain the whole of the consideration paid for the conveyance of both lots.

XIV.

That third-party defendants, and Parkers agreed that the value of Lot 1 was the sum of \$2,375.00 per acre and that the value of the portion of Lot 1 acquired by the Parkers was the sum of \$.....

XV.

That a just basis for the proportionate abatement of the total purchase price is the total consideration paid Winans family less the value of Lot 1 as set forth above, to wit: \$35,625.00 which is the sum of \$.....

Third Count

Abatement of Purchase Price on Account  
of Mutual Mistake

XVI.

That during all of the negotiations leading up to the grant of said option, the exercise thereof and the purchase of said property and delivery of the deed therefor, third-party defendants represented to

Stegmann and to Parkers and/or to Stegmann as Parkers' agent, that the United States of America had asserted some claim of ownership to Lot 2 which was inconsequential and minor and without basis in fact and that the title to said Lot 2 could be easily perfected and intended that Stegmann and Parkers rely thereon.

### XVII.

That Parkers relied on said representations, believed that they were true and was mistaken as to the fact that the United States owned said Lot 2 and that third-party defendants either knew said representations were false or in the alternative were mutually mistaken with Parkers as to the truth thereof.

### Plaintiff's Claims for Declaratory Judgment and Relief

### XVIII.

That plaintiff claims a right to indemnity in whole or part from Stegmann and/or third-party defendants for any loss or damage for which it might be held liable to Parkers.

### XIX.

That there are common disputed questions of fact and law in the controversy between plaintiff and Parkers and the controversy between plaintiff and Stegmann and third-party defendants, which common questions of fact and law include the following:

(a) What is the legal effect of the grant of subject option and the exercise thereof.

(b) Whether Stegmann, in acquiring said option, was acting in his own behalf or as an agent for an undisclosed principal which was defendant Chet L. Parker.

(c) Whether or not, after the assignment of said option to Chet L. Parker, Stegmann acted as an agent for an undisclosed principal who was defendant Chet L. Parker, or as an agent for a disclosed principal, defendant Chet L. Parker, with limited authority, which limitation was known to third-party defendants.

(d) What was the reasonable market value of the consideration paid by Parker to Stegmann for the assignment of said option.

(e) What is the extent of the defect in or failure of title to Lot 2.

(f) What was the total amount of the loss or damage sustained by Parkers as a result of said defect or failure.

(g) What portion of said loss or damage is covered under said purchaser's or owner's policy of title insurance and recoverable by Parkers from plaintiff.

(h) What was the reasonable market value of Lot 2 and what was the reasonable market value of Lot 1 less the reserved acreage at the time of subject transaction.

(i) What would be a just basis of abatement of a portion of the purchase price of said option and Lots 1 and 2 and of the purchase price for the assignment of said option.

(j) Whether or not Ethel and Paul Winans disclosed to Stegmann and/or Parkers their knowledge relative to the defect in title to Lot 2 and the prior claim of loss under the Pacific Abstract Title Company insurance policy.

(k) Whether or not Stegmann disclosed to Parkers his knowledge relative to the defect in title to Lot 2 and the prior claim of loss under the Pacific Abstract Title Company insurance policy.

## XX.

That by reason of the foregoing, a bona fide justifiable controversy exists between plaintiff and third-party defendants.

Wherefore, in the event that the court awards defendants Chet L. Parker and Lois M. Parker judgment on their counterclaim against plaintiff herein, plaintiff prays that the court make and enter a judgment herein as follows:

1. Declaring that upon the exercise of the option set forth in Exhibit A attached to said Amended Complaint by the giving of Notice of Election to Purchase and the payment of the second installment of the purchase price provided in said option, a binding executory contract of sale was created under which the sellers agreed to sell and convey marketable title to Lots 1 and 2, and the buyers

agreed to purchase same according to the terms thereof.

2. Declaring whether Stegmann in acquiring said option was acting in his own behalf or as an agent for an undisclosed principal, Chet L. Parker.

3. Declaring whether or not after the assignment of said option to Chet L. Parker, Stegmann acted as an agent for an undisclosed principal, Chet L. Parker, or as an agent for a disclosed principal, Chet L. Parker, with limited authority, and if the latter, whether or not the limitation on authority was known to Paul and Ethel Winans.

4. Declaring what was the reasonable market value of the consideration paid by Parker to Stegmann for the assignment of said option.

5. Declaring what estate, title or interest in Lot 2 was conveyed to Chet L. Parker under the conveyance set forth in Exhibit B.

6. Declaring and determining what was the total amount of the loss or damage sustained by Parkers as a result of said defect in or unmarketability of the title to Lot 2.

7. Declaring and determining what was the reasonable market value of the estate, title or interest in Lot 2 conveyed to defendant Chet L. Parker by said deed set forth in Exhibit B and what was the reasonable market value of Lot 1 less the reserved acreage at the time of said conveyance.

8. Declaring and determining what would be a just basis for abatement of a portion of the purchase price for Lots 1 and 2 under said option and of the purchase price or consideration paid for the assignment of said option.

9. Declaring and determining whether or not Ethel and Paul Winans disclosed to Stegmann and/or Parkers their knowledge relative to the defect in the title to Lot 2 and the prior claim of loss under the title insurance policy issued by Pacific Abstract Title Company.

10. Declaring and determining whether or not Stegmann disclosed to Parker his knowledge, if any, relative to the defect in the title to Lot 2 and the prior claim of loss under the title insurance policy issued by Pacific Abstract Title Company.

11. Declaring and determining the extent, if any, to which defendants Chet L. Parker and Lois M. Parker are entitled to participate in any subrogation recovery of plaintiff against third-party defendants.

12. Awarding plaintiff judgment against third-party defendants Paul Winans and Ethel Winans in an amount equal to the judgment entered in favor of Parkers and against plaintiff, conditioned only upon the payment thereof by plaintiff to Parkers.

13. In the alternative, should the court deny the prayer set forth in prayer 12 above, then for judgment in favor of plaintiff and against the third-party defendants Paul Winans and Ethel Winans

in an amount equal to the proportionate abatement of the purchase price paid for said Lots 1 and 2 as determined by the court hereunder, which judgment to be conditioned upon prior payment by plaintiff to Parkers thereof.

14. Determining and declaring the respective portions of the total purchase price paid to Paul Winans and Ethel Winans for said Lots 1 and 2 subsequently distributed to the other named third-party defendants and awarding plaintiff judgment against said last referred to third-party defendants in an amount not exceeding the portion of said purchase price received by them and which judgment should be proportioned in accordance with the determination of the court under the last two prayers herein.

15. Awarding plaintiff such further and equitable relief as to the court may seem proper, together with its costs and disbursements herein.

GRIFFITH, PHILLIPS &  
COUGHLIN,

By /s/ JAMES K. BUELL,  
Attorneys for Plaintiff and  
Third-Party Plaintiff.

Service of copy acknowledged.

[Endorsed]: Filed December 29, 1952.

[Title of District Court and Cause.]

THIRD-PARTY DEFENDANTS' ANSWER,  
COUNTER-CLAIM AGAINST THIRD-  
PARTY PLAINTIFF, AND CLAIM  
AGAINST DEFENDANTS

Come now the third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans, and in answer to the complaint of the third-party plaintiff allege as follows:

I.

Admit the allegations of paragraphs I, II, III and IV of said amended complaint.

Deny the allegations of paragraph V of said amended complaint and for the meaning and effect of said Act of Congress refer to the same.

Admit the allegations of paragraph VI of said amended complaint.

Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs VII, VIII and IX of said amended complaint and therefore deny the same.

Deny the allegations of paragraph X of the amended complaint except admit and aver that the matters set forth in paragraphs VII, VIII and IX are now shown in the public deed records of Hood River County, Oregon.

Admit the allegations of paragraph XI of said amended complaint except deny that the deed by Ethel Winans, referred to in sub-paragraph 4, was made, executed and delivered to Chet L. Parker.

Admit the allegations of paragraphs XII, XIII, XIV and XV of said amended complaint.

Deny each and every allegation of paragraph XVI of said amended complaint except admit that on Saturday, August 11, 1951, Paul Winans and Ethel Winans executed and delivered to the defendant Walter Stegmann a document entitled "Option."

Admit the allegations of paragraph XVII of said amended complaint.

Deny each and every allegation of paragraph XVIII of said amended complaint except admit and aver that on or about August 18, 1951, the defendant Walter Stegmann met with the third-party defendants Paul Winans and Ethel Winans and personally executed a document drawn by Paul Winans whereby Stegmann gave notice of his election to purchase said Lots 1 and 2 in accordance with said option of August 11, 1951, and in connection therewith the defendant Stegmann delivered his personal check in the sum of \$4,000.00; and that at said time and place the defendant Stegmann, unknown to third-party defendants, was acting as the duly authorized agent for an undisclosed principal, which undisclosed principal was the defendant Chet L. Parker.

Admit the allegations of paragraph XIX of said amended complaint.

Deny each and every allegation of paragraph XX of said amended complaint.

Admit the allegations of paragraph XXI of said amended complaint except deny knowledge or in-

formation sufficient to form a belief as to the date of delivery of said policy of owner's title insurance.

Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs XXII and XXIII of said amended complaint and therefore deny the same.

Deny each and every allegation of paragraph XXIV of said amended complaint except admit that the answering third-party defendants knew subsequent to January 9, 1944, that the United States claimed ownership of said Lot 2.

Deny the allegations of paragraphs XXV, XXVI and XXVII of said amended complaint except admit and aver that at the time of acquiring said option and at all times thereafter until subsequent to the delivery of the deed on September 11, 1951, the defendant Stegmann unknown to third-party defendants was in fact acting as the duly authorized agent for an undisclosed principal, which undisclosed principal was the defendant Chet L. Parker.

Admit the allegations of paragraph XXVIII of said amended complaint.

Admit the allegations of paragraphs XXIX, XXX, XXXI, XXXII, XXXIII and XXXIV of said amended complaint.

Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs XXXV and XXXVI of said amended complaint and therefore deny the same.

Admit the allegations of paragraph XXXVII of said amended complaint.

Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs XXXVIII, XXXIX, XL and XLI of said amended complaint and therefore deny the same.

Deny each and every allegation of paragraph XLII of said amended complaint.

Deny each and every allegation of paragraphs XLIII, XLIV, XLV, XLVI, XLVII, XLVIII, XLIX, L, LI and LII of said amended complaint.

Deny each and every allegation of paragraph LIII except admit and aver that the defendant Stegmann knew at all times that the United States claimed ownership of said Lot 2.

Deny each and every allegation in paragraphs LIV, LV, LVI and LVII of said amended complaint.

Admit the allegations of paragraphs LVIII and LIX of said amended complaint.

Deny each and every allegation of paragraphs LX and LXI of said amended complaint, except aver and admit that there are certain controversies between the plaintiff and the defendants.

## II.

Answering the counterclaim of the defendant Chet L. Parker, these answering third-party defendants admit the allegations of paragraphs I, II, III, IV and V of said counterclaim.

Deny the allegations of paragraph VI of said counterclaim except admit that the defendant Chet L. Parker relied upon said title report and said

purchaser's policy of title insurance and that the third-party defendant Paul Winans, on September 11, 1951, received a cashier's check in the sum of \$95,000.00 and caused to be delivered a refund of \$4,750.00 for property excepted.

Deny knowledge or information sufficient to form a belief as to the allegations of paragraph VII of said counterclaim except that the plaintiff issued the defendant Chet L. Parker an owner's policy of title insurance in exchange for the purchaser's policy of title insurance previously issued by it and that a copy of said owner's policy of title insurance is attached to plaintiff's amended complaint marked Exhibit "F."

Deny knowledge or information sufficient to form a belief as to the truth or falsity of paragraphs VIII, IX, X, XI, XII and XIII of said counterclaim except admit the allegations in paragraph X that certain negotiations were had between the plaintiff and the defendant and the allegations in paragraph XII that the plaintiff has refused to pay the defendant Chet L. Parker the sum of \$125,000.00.

### III.

Deny each and every allegation of paragraph III of the third-party complaint except that the third-party defendants Paul Winans, Ross M. Winans, Audubon Winans, Linnaeus Winans and Ethel Winans are sons and daughter of W. R. Winans and Mary W. Winans, husband and wife, deceased, and that said third-party defendants have received portions of the purchase price paid for said Lots

1 and 2.

IV.

Deny each and every allegation of paragraph IV of the third-party complaint except admit that the third-party defendant Ethel Winans has distributed the sum of \$12,500.00 from the purchase price received for the sale of said Lots 1 and 2 to other persons not made a party to this action.

V.

Admit the allegations of paragraph V of the third-party complaint.

VI.

Deny each and every allegation of paragraph VI of the third-party complaint.

VII.

Deny each and every allegation of paragraph VII of the third-party complaint except admit and aver that on or about August 18, 1951, the defendant Stegmann personally executed a document drawn by the defendant Paul Winans whereby Stegmann gave notice of his intention to purchase Lots 1 and 2 in accordance with said option of August 11, 1951, and in connection therewith delivered his personal check in the sum of \$4,000.00 and that on or about September 11, 1951, the third-party defendant Paul Winans and his attorney delivered to another attorney, whom the third-party defendant Paul Winans believed to be representing the defendant Stegmann but who had in fact been

retained by the defendant Lois M. Parker acting on behalf of her undisclosed principal, the defendant Chet L. Parker, a deed executed by the third-party defendant Ethel Winans, in which the name of the grantee was left in blank and also a refund check in the sum of \$4,750.00 for additional acreage to be retained which was not provided for in said option of August 11, 1951, in exchange for a cashier's check in the sum of \$95,000.00.

#### VIII.

Deny each and every allegation of paragraph VIII of the third-party complaint.

#### IX.

Deny each and every allegation of paragraph IX of the third-party complaint.

#### X.

Deny each and every allegation of paragraph X of the third-party complaint.

#### XI.

Deny each and every allegation of paragraph XI of the third-party complaint except admit that the defendant Chet L. Parker acquired a good and marketable title to said Lot 1.

#### XII.

Deny each and every allegation of paragraph XII of the third-party complaint.

#### XIII.

Deny each and every allegation of paragraph XIII of the third-party complaint.

XIV.

Deny each and every allegation of paragraph XIV of the third-party complaint.

XV.

Deny each and every allegation of paragraph XV of the third-party complaint.

XVI.

Deny each and every allegation of paragraph XVI of the third-party complaint except admit and aver that the third-party defendants at all times herein mentioned made a full and complete disclosure to the defendant Stegmann concerning the claim of ownership of United States to Lot 2 and the nature and basis thereof, and that a similar disclosure was made to the defendant Chet L. Parker although at the time of the disclosure to the latter it was not known that he was in fact the undisclosed principal who was purchasing said Lots 1 and 2.

XVII.

Deny each and every allegation of paragraph XVII of the third-party complaint.

XVIII.

Admit that the plaintiff claims a right of indemnity but specifically deny that there is any basis therefor.

XIX.

Deny the allegations of paragraph XIX of the third-party complaint except that there may be some common disputed questions of fact and of law in the controversies between the plaintiff and the

defendants Parker and between plaintiff and the defendant Stegmann and the third-party defendants.

## XX.

Deny each and every allegation of paragraph XX of the third-party complaint.

Further answering the third-party complaint and as a first separate defense thereto, the third-party defendants allege:

## XXI.

At no time did the third-party plaintiff and the third-party defendants have any direct dealing or contact in any way relating to the issuance by the third-party plaintiff to the defendant Chet L. Parker of its preliminary title report, of its policy of purchaser's title insurance, and its policy of owner's title insurance; and the third-party defendants did not have any knowledge subsequent to the recording on September 11, 1951, of the deed to said Lots 1 and 2 that the plaintiff had issued its said report and title policies.

Further answering said third-party complaint and as a second separate defense thereto, the third-party defendants allege:

## XXII.

Prior to the issuance of a preliminary title report on said Lots 1 and 2, on or about August 15, 1951, the third-party plaintiff had readily available to it for inspection public records in various offices of the United States and of the State of Oregon from which it could have ascertained the claim of

ownership of the United States to Lot 2; and the third-party plaintiff also had under its possession and control or readily available to it for inspection the files and records of the Hood River Abstract and Investment Company, from which there was readily available to the third-party plaintiff information indicating the claim of ownership of the United States to Lot 2.

Further answering said third-party complaint and as a third separate defense thereto, the third-party defendants allege:

### XXIII.

Subsequent to the time that the third-party plaintiff was advised that the United States claimed ownership of Lot 2 and that there had been a settlement of a policy of title insurance previously issued on said Lot 2 to the third-party defendant Ethel Winans by the Pacific Abstract Title Company by reason of said claim, the third-party plaintiff issued to the defendant Chet L. Parker its policy of owner's title insurance in place of its policy of purchaser's title insurance previously issued by it to said defendant Chet L. Parker.

### Counterclaim

Further answering third-party plaintiff's amended complaint and as a counterclaim against the third-party plaintiff, the third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans allege:

## I.

The third-party defendant Linnaeus Winans has been and now is engaged in operating a logging business near Hood River, Oregon, in which business it is necessary for him to secure financing. At all times herein mentioned the third-party defendant Paul Winans has been and now is engaged in assisting in the management of said logging business and has also been and is now engaged in the promotion and construction of a housing development near Dee, Oregon, in which business it is essential that he obtain adequate and continued financing.

## II.

That the third-party plaintiff has caused to be published and has published in writing false and defamatory statements concerning the third-party defendants, to wit, that the Winans family falsely represented that they were the owners of a marketable title to said Lot 2 and that they failed to disclose to the defendants Chet L. Parker, Lois M. Parker or Walter Stegmann the claim of ownership of the United States to said Lot 2 and the settlement of the policy of title insurance issued to Ethel Winans by the Pacific Abstract Title Company by reason of the said claim of ownership to Lot 2 by the United States.

## III.

That said false and defamatory statements were widely published and circulated and appeared in

newspapers in the City of Hood River, Oregon, the home community of the third-party defendants and as a result they have been damaged in their reputation and in their businesses and have been exposed to ridicule, contempt and disgrace, particularly in Hood River, Oregon, and in the surrounding area, all to their damage in the sum of \$70,000.00, and said third-party defendants have been further damaged in the sum of \$20,000.00 by being forced to retain and pay for the services of attorneys to defend them in the present action and to clear their names and reputations of the false and defamatory imputations of dishonesty and double dealing cast upon them by the third-party plaintiff.

#### IV.

That said defamatory statements were and are in truth and in fact false and were published by the third-party plaintiff wilfully and maliciously or with reckless abandon and with no endeavor whatsoever to check the truth of said defamatory statements; and that by reason thereof the third-party defendants are entitled to exemplary and punitive damages in the sum of \$100,000.00.

Claim Against Defendants Chet L. Parker, Lois M. Parker and Walter Stegmann Alternative to Counterclaim

As a claim against the defendants Chet L. Parker, Lois M. Parker and Walter Stegmann alternative to their claim against the third-party plaintiff, the third-party defendants Paul Winans, Ethel Winans,

Ross M. Winans, Audubon Winans and Linnaeus Winans allege:

I.

At all times herein alleged the third-party defendants are residents of the State of Oregon and the defendants Chet L. Parker, Lois M. Parker and Walter Stegmann are residents of the State of Washington.

II.

At all times herein mentioned the third-party defendant Paul Winans acted on behalf of himself and of other third-party defendants and was known to be so acting by the defendants. At all times herein mentioned the third-party defendant Linnaeus Winans has been and now is engaged in operating a logging business near Hood River, Oregon, in which business it is necessary for him to secure financing. At all times herein mentioned the third-party defendant Paul Winans has been and now is engaged in assisting in the management of said logging business and has also been and is now engaged in the promotion and construction of a housing development near Dee, Oregon, in which business it is essential that he obtain adequate and continued financing.

III.

From July, 1951, until some time subsequent to September 11, 1951, the defendant Walter Stegmann was acting unknown to the third-party defendants as the duly authorized agent for an undisclosed principal which undisclosed principal was the defendant Chet L. Parker; and the defendant

Lois M. Parker was also acting as an agent of said undisclosed principal and particularly on September 10 and 11, 1951.

#### IV.

During the month of July, 1951, and extending until and including August 11, 1951, the defendant Walter Stegmann negotiated with the third-party defendant Paul Winans for the purchase of Lot 1 and later of Lots 1 and 2; and during the course of said dealings and on later occasions prior to September 11, 1951, the third-party defendant Paul Winans made a full and complete disclosure to the defendant Walter Stegmann concerning the claim of ownership of the United States to Lot 2 and the nature and basis thereof, and also made a full and complete disclosure concerning the settlement of the policy of title insurance issued by the Pacific Abstract Title Company on said Lot 2 as a result of said claim of ownership of the United States to Lot 2. A similar full and complete disclosure was made by Paul Winans to the defendant Chet L. Parker personally before September 11, 1951, although when making said disclosure Paul Winans did not know that the defendant Chet L. Parker was in fact the undisclosed principal who was purchasing Lots 1 and 2.

#### V.

During the month of July, 1951, and subsequent thereto, the defendants Chet L. Parker, Lois M. Parker and Walter Stegmann entered into and engaged in a conspiracy to defraud the plaintiff and third-party defendants and to defame the names

and reputations of and to damage the third-party defendants in their businesses and reputations.

## VI.

Pursuant to said conspiracy and in furtherance thereof said defendants engaged in many activities, to wit:

(a) The defendant Stegmann acquired on behalf of his undisclosed co-conspirators an Option to purchase all of the right, title and interest of the third-party defendants in Lot 1 for the sum of \$80,000.00 and in Lot 2 for the sum of \$20,000.00, with full knowledge as to the previously asserted claim of ownership of the United States to Lot 2 and of the previous settlement of a policy of title insurance issued to Ethel Winans upon said Lot 2 by reason of the claim of the United States, and the defendant Stegmann paid for said option with his personal check in the sum of \$1,000.00.

(b) That on or about August 13, 1951, the defendant Stegmann purportedly executed an assignment of said Option to his co-conspirator Chet L. Parker but said instrument was in fact only a device used by the co-conspirators to raise the agreed purchase price of Lot 2 from \$20,000.00 to \$90,000.00 and to lower the agreed price of Lot 1 from \$80,000.00 to \$35,000.00, and was an artifice used for placing a higher total value on Lots 1 and 2 in order to secure a larger policy of title insurance from plaintiff.

(c) That on the same date the said defendants effected their purported assignment, the defendant Chet L. Parker applied to the plaintiff, in part, for a title report covering said Lots 1 and 2, but in making such application to the plaintiff, the defendant Chet L. Parker, with knowledge and with intent to defraud the plaintiff and the third-party defendants, did not disclose to the plaintiff the facts in his possession relating to the claim of ownership of the United States to Lot 2 and relating to the settlement of the policy of title insurance previously issued by the Pacific Abstract Title Co., which facts were not then matters set out in the public deed records in Hood River County, Oregon, and were not then, as a matter of actual fact, known to the plaintiff and were not so known until after the delivery of its purchaser's policy of title insurance to the defendant Chet L. Parker.

(d) That through such fraudulent non-disclosure, the said defendants were successful in securing the issuance and delivery to the defendant Chet L. Parker by the plaintiff of its title report that the plaintiff was prepared to issue a title insurance policy in the usual form insuring that the title to said Lots 1 and 2 was in Ethel Winans.

(e) That with said title report in their possession, the said defendants were in a position to proceed with their conspiracy and the defendant Walter Stegmann on or about August 18, 1951, met with Paul Winans and Ethel Winans and executed a document giving notice of his election to exercise

his option to purchase Lots 1 and 2, and therewith said defendant delivered his personal check in the sum of \$4,000.00.

(f) That on or about September 4, 1951, the defendant Chet L. Parker secured the delivery from plaintiff of a purchaser's policy of title insurance for Lots 1 and 2, no exceptions being made in said policy with respect to any claim whatsoever of the United States. With said policy in their possession, the said conspirators then engaged an agent to close the purchase of said Lots 1 and 2, and on the morning of September 11, 1951, said agent secured the delivery of a deed to said Lots 1 and 2, the name of the grantee of said deed being left in blank at the time of delivery pursuant to the request of the defendant Walter Stegmann. Subsequent to said delivery and prior to being recorded in the Record of Deeds of Hood River County, Oregon, the name of the defendant Chet L. Parker was inserted as the grantee of said deed.

(g) That having some time thereafter secured the delivery from plaintiff of an owner's policy of title insurance in exchange for his purchaser's policy of title insurance, the defendant Chet L. Parker then notified the plaintiff that the United States claimed the ownership of Lot 2 and has made a claim of loss upon the plaintiff to pay him the sum of \$125,000.00 by reason of said defect in title.

## VII.

That pursuant to said conspiracy and in making

said claim of loss to the plaintiff, the defendants Chet L. Parker and Lois M. Parker met and conferred with, on various occasions, agents and officers of the plaintiff, and maliciously and with intention to defame and defraud the third-party defendants, the said defendants told the said agents and officers of the plaintiff in words and by their conduct that the third-party defendants had represented they were the owners and had a marketable title to Lot 2. Said defendants further maliciously and with intention to defame told said agents and officers of the plaintiff that the third-party defendants had failed to disclose their knowledge of the claim of ownership of the United States to Lot 2 and of the settlement of the policy of title insurance on Lot 2 previously issued by the Pacific Abstract Title Company as a result of a claim made under said policy by reason of the previously asserted claim of ownership of the United States to Lot 2.

### VIII.

That said defamatory statements made by the said defendants were in fact false and known to be so by the said defendants and were made with the intention and knowledge that the plaintiff would institute legal proceedings against the third-party defendants and that the plaintiff would proceed to publish and spread the false and defamatory statements made by the said defendants concerning the third-party defendants; and the intentions and expectations of the said defendants have in fact been accomplished in that the plaintiff has instituted the

present action in which it has published the charge that the third-party defendants "falsely represented" that they were the owners of a marketable title to Lot 2 and that none of the third-party defendants disclosed to said defendants the claim of ownership of the United States to Lot 2 or the settlement of the policy of title insurance issued by the Pacific Abstract Title Company. The intention and expectations of the said defendants have been further accomplished in that there have been published statements giving wide circulation to the above charges made by the plaintiff.

## IX.

As a result of said conspiracy and of the false and defamatory statements made by the said defendants and caused to be published and widely circulated by them, the third-party defendants have been damaged in their reputation and in their businesses and have been exposed to ridicule, contempt and disgrace, particularly in Hood River, Oregon, and in the surrounding area, all to their damage in the sum of \$70,000.00; and said third-party defendants have been further damaged in the sum of \$20,000.00 by being forced to retain and pay for the services of attorneys to defend them in the present action and to clear their names and reputations of the false and defamatory imputations of crime, dishonesty, and double dealing cast upon them by the defendants.

## X.

That the said defendants Chet L. Parker and his wife, Lois M. Parker, are persons of wealth and are the owners of land, timber, monies, stocks, bonds and other worldly goods; and that by reason of the malicious and intentional defamatory statements made and caused to be published by them, the third-party defendants are entitled to exemplary and punitive damages in the sum of \$100,000.00.

As an alternative claim against the defendants Chet L. Parker and Lois M. Parker, the third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans allege:

## I.

Reallege the allegations, except omitting any reference to a conspiracy, of paragraphs I, II, III, IV, VII, VIII, IX and X of the claim herein against the defendants Chet L. Parker, Lois M. Parker, and Walter Stegmann, as though here fully set out.

Wherefore, the third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans pray that the Court dismiss the third-party complaint herein and award them their costs and disbursements and that the Court make and enter a judgment awarding them damages against the plaintiff, Title and Trust Company, or, in the alternative, against the defendants Chet L. Parker, Lois M. Parker and Walter Stegmann, in the sum of \$70,000.00, special damages in

the sum of \$20,000.00, and exemplary and punitive damages in the sum of \$100,000.00, and for such other and further relief as to the Court shall seem just and equitable.

KRAUSE & EVANS,

By /s/ DENNIS J. LINDSAY,

Attorneys for Third-Party Defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans.

Service of copy acknowledged.

[Endorsed]: Filed December 29, 1952.

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[Title of District Court and Cause.]

ANSWER OF DEFENDANTS PARKER TO  
CROSS-CLAIM OF DEFENDANTS WIN-  
ANS, AND CROSS-CLAIM

Defendants Chet L. Parker and Lois M. Parker answer the cross-claim of third-party defendants Winans as follows:

First Defense

I.

Defendants Parker allege that said cross-claim does not set forth a claim arising out of the transaction or occurrence that is the subject matter either of the original action or of these defendants' counterclaim, nor does it relate to any property that is the subject matter of the original action.

## Second Defense

Answering the allegations of the cross-claim of third-party defendants, defendants Parker admit, deny and allege:

## I.

Admit the allegations of paragraph I.

## II.

Answering the allegations of paragraph II, admit that third-party defendant Paul Winans acted on behalf of himself and other third-party defendants, and was known by these defendants to be acting on behalf of third-party defendant Ethel Winans, that Paul Winans has been engaged in the promotion and construction of a housing development; deny that they have sufficient knowledge or information to form a belief respecting the further allegations of said paragraph II.

## III.

Deny the allegations of paragraphs III, IV, V, VI, VII, VIII, IX and X of said cross-claim and the whole thereof, except these defendants admit that prior to September 11, 1951, defendant Walter Stegmann negotiated with third-party defendant Paul Winans for the purchase of said lots 1 and 2, that defendant Chet L. Parker was advised by third-party defendant Paul Winans concerning a policy of title insurance which Ethel Winans had obtained; that on or prior to August 11 Paul Winans and Ethel Winans executed an option in favor of defendant Stegmann and received \$1,000.00 there-

for; that on August 13 defendant Stegmann assigned said option to defendant Chet L. Parker, at which time said parties agreed upon a valuation of Lot 1 in the sum of \$35,000.00 and of Lot 2 in the sum of \$90,000.00, as the relative values of said two parcels of property; that defendant Chet L. Parker obtained from plaintiff a title report and certain title insurance policies; that an attorney, retained by defendant Chet L. Parker for said purpose, obtained a delivery of the bargain and sale deed and delivered a bank cashier's check to defendant Paul Winans as final consideration for the purchase of said property and thereafter secured an owner's title insurance policy.

Answering the allegations of the alternative claim against these defendants set forth on page 17 of the third-party defendants' answer, these defendants refer to the admissions and denials to the allegations of said third parties' first claim against these defendants and make identical admissions and denials to paragraph I of said alternative claim.

#### Cross-Claim of Defendant Chet L. Parker

Based upon the allegations of plaintiff's complaint and of the counterclaim of defendant, Chet L. Parker, said defendant prays that in the event plaintiff obtains the relief prayed for that said title insurance policy be cancelled, that said defendant Chet L. Parker have and recover of and from defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans judgment

in the sum of \$125,000.00, together with his costs and disbursements incurred herein.

Wherefore, defendants Parker pray that the third-party claim of third-party defendants Winans, et al., be dismissed, and that in the event plaintiff obtains the relief prayed for that said title insurance policy be cancelled, that defendant Chet L. Parker have and recover of and from defendants Paul Winans, et al., judgment in the sum of \$125,000.00, together with his costs and disbursements incurred herein.

CAKE, JAUREGUY & TOOZE,

By /s/ NICHOLAS JAUREGUY,

Attorneys for Defendants  
Parker.

Service of copy acknowledged.

[Endorsed]: Filed January 5, 1953.

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[Title of District Court and Cause.]

ANSWER OF THIRD-PARTY DEFENDANTS  
TO CROSS-CLAIM OF DEFENDANT CHET  
L. PARKER

Come now third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans and for answer to the cross-claim of the defendant Chet L. Parker, deny each and every allegation therein contained, except insofar as admitted in said third-party defendants'

answer, counterclaim against the third-party defendant and claim against the defendants Chet L. Parker, Lois M. Parker and Walter Stegmann.

Wherefore, the third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans pray that the cross-claim of the defendant Chet L. Parker be dismissed and that they be awarded their costs and disbursements herein.

KRAUSE & EVANS,

By /s/ DENNIS J. LINDSAY,

Attorneys for Third-Party Defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans.

Service of copy acknowledged.

[Endorsed]: Filed January 7, 1953.

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[Title of District Court and Cause.]

### STIPULATION

It is Stipulated and Agreed by and between the undersigned that the defendants Chet L. Parker and Lois M. Parker and the defendant Walter Stegmann withdraw and waive their designated "First Defense," set forth in the respective answers of said defendants to the cross-claim of the third-party defendants against them, which First Defense is to the effect that said cross-claim does not set

forth a claim arising out of the transaction or occurrence that is the subject matter of the original action, or of the counterclaim of the defendants Chet L. Parker and Lois M. Parker, nor does it relate to any property that is the subject matter of the original action.

Dated this 9th day of January, 1953.

/s/ NICHOLAS JAUREGUY,  
Of Attorneys for Defendants Chet L. Parker and  
Lois M. Parker.

/s/ JOHN D. RYAN,  
Of Attorneys for Defendant  
Walter Stegmann.

/s/ DENNIS J. LINDSAY,  
Of Attorneys for Third-Party Defendants Paul  
Winans, et al.

[Endorsed]: Filed January 9, 1953.

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[Title of District Court and Cause.]

### STIPULATION OF ADMITTED FACTS

It is hereby stipulated and agreed by and between plaintiff and defendants and third-party defendants through their respective attorneys of record in the above cause that the following facts are admitted by all of said parties and that no evidence need be given or introduced concerning said facts at the trial of the above cause, and that this stipu-

lation may and shall be introduced into evidence at the time of said trial.

It is further stipulated and agreed between all of the parties hereto that by their admission of the following facts, the parties hereto do not necessarily admit that they had first-hand knowledge thereof at the particular time of occurrence of the transaction, fact, condition or event admitted, or of the details of the occurrence thereof, except as such knowledge is specifically admitted in the following statements of admitted facts:

#### I.

That plaintiff is a corporation organized under the laws of the State of Oregon and authorized thereby to engage in the business of insuring title to real property.

#### II.

That defendants, Chet L. Parker and Lois M. Parker, are husband and wife, and at the time of commencement of this action were and now are residents of the State of Washington.

#### III.

That third-party defendants Paul Winans, Ross M. Winans, Audubon Winans, Linnaeus Winans and Ethel Winans are sons and daughter of W. R. Winans and Mary Winans, husband and wife, deceased, and have received portions of the purchase price paid for the property hereafter described as Lots 1 and 2.

#### IV.

That at the time of commencement of the above

action, defendant Walter Stegmann was and now is a resident of the State of Washington.

#### V.

That the amount in controversy between plaintiff and Parkers and between plaintiff and Stegmann in each instance exceeds the sum of \$3,000 exclusive of interests and costs and attorney's fees.

#### VI.

That by Act of Congress February 14, 1859, 11 Stat. at Large 383, Chapter 33, Section 4, Oregon was admitted as a state of the United States of America.

#### VII.

That at the time of the admission of the State of Oregon into the United States of America, the following described property was a part of the public lands of the United States of America, and said property had not been sold or otherwise disposed of; and that no patent has been issued on said property by the United States of America:

Defendant Stegmann does not stipulate to the facts set forth in this Paragraph VII.

The Northeast one-quarter of the Northwest one-quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian, Hood River County, Oregon. (Hereinafter referred to as "Lot 2.")

#### VIII.

That claim of ownership of the United States of America to said Lot 2 is not a matter of record in

such of the official records of Hood River County, Oregon, in which documents affecting title to real property are placed of record pursuant to the recording Act of the State of Oregon.

## IX.

The following deeds purporting to convey the above described property are shown by the official records of deeds of Hood River County, Oregon, is as follows and none others and that said conveyances set forth below were made, executed and delivered:

1. State of Oregon to Chas. A. Macrum by grant deed dated February 11, 1889, filed of record in Hood River County on April 13, 1907, in Volume L, page 288 of Deeds, and also filed of record in Volume 43, at page 480 of the Deed Records of Wasco County, State of Oregon.

2. C. A. Macrum (an unmarried man) to W. R. Winans by warranty deed dated April 25, 1902, and filed of record in Hood River County, Oregon, on April 26, 1902, in Volume K at page 481 of the Deed Records of Hood River County, Oregon, and also filed of record in Volume 33 at page 595 of the Deed Records of Wasco County, Oregon.

3. W. R. Winans and Mary Winans, husband and wife, to Ethel Winans by bargain and sale deed dated December 29, 1943, and filed of record on December 30, 1943, in Volume 30 at page 405 of the Deed Records of Hood River County, Oregon.

4. Ethel Winans, a single woman, to Chet L. Parker by deed dated September 10, 1951, and filed of record September 11, 1951, Volume 46 of Deeds, Instrument No. 80451 and a copy of which deed is hereto annexed marked Exhibit B, which deed was executed with the grantee's name in blank and delivered with the grantee's name in blank to Kenneth Abrahams, attorney.

### X.

That subsequent to February 11, 1889, and to date Hood River County, as a political subdivision of the State of Oregon, has assessed, levied and collected real property taxes, including fire patrol assessments on said Lot 1 and Lot 2 and said taxes were paid from the tax years 1902-1903 through and including 1950-1951 by W. R. Winans and by Ethel Winans or by Paul Winans on their behalf.

### XI.

That on or prior to December 30, 1943, third-party defendants Paul Winans and Ethel Winans made application for and on said date the Pacific Abstract Title Company, by the Hood River Abstract and Investment Co., its agent, issued to Ethel Winans a policy of title insurance No. 136-HR-37882 in the face amount of \$8,000.00 insuring a fee simple title in said Lots 1 and 2 in the said Ethel Winans free from all encumbrances, subject to certain exceptions contained and set forth in said policy not material herein.

## XII.

Commencing in 1939 said Paul Winans had carried on negotiations with the Forest Supervisor of the Mt. Hood National Forest of the Forest Service, United States Department of Agriculture, for the exchange of said Lots 1 and 2 for certain United States timber lands. Such negotiations continued over the succeeding years until the said Forest Supervisor wrote said Paul Winans a letter, dated January 9, 1944, stating in part, that the United States claimed ownership of said Lot 2 but proposing to proceed with the exchange of said Lot 1. Paul Winans replied by letter dated February 5, 1944, that by virtue of all available records, plats and tax assessments W. R. Winans had been the openly recognized owner of said Lots 1 and 2 and that he was referring the claim of the United States to the Pacific Abstract Title Company under the policy of title insurance made by them. Attorney F. M. DeNeffe was retained to represent third-party defendant Ethel Winans in connection with her rights under said policy of title insurance.

## XIII.

That by letter, dated March 3, 1944, drafted by said F. M. DeNeffe and signed by the third-party defendant Ethel Winans, a claim was made against the said Pacific Abstract Title Company under said policy on account of the defect in and the unmarketability of the title of the said Ethel Winans to said Lot 2. On or about April 3, 1944, the said Ethel Winans received the sum of \$3,000.00 from said

company in full settlement and discharge of said claim; and as part of the consideration of said settlement the said company waived all rights and claims of every kind to said Lot 2 as against the said Ethel Winans, her heirs and assigns, the United States, the State of Oregon and to any monies recovered or recoverable from Hood River County by reason of taxes theretofore paid on said Lot 2, and also endorsed on said policy of title insurance its continued liability as to the said Lot 1 in the sum of \$2,000.00.

#### XIV.

That on Saturday, August 11, 1951, third-party defendants Paul Winans and Ethel Winans, executed and delivered to the defendant Walter Stegmann, a document entitled "Option," a true copy of which is hereto annexed as Exhibit C. Said document was drafted by Paul Winans, and its said execution and delivery was made with the approval of the defendants Ross M. Winans, Audubon Winans and Linnaeus Winans.

#### XV.

That on August 15 or 16, 1951, plaintiff delivered to defendant Chet L. Parker a preliminary report as to the title of the said Lots 1 and 2 and accepted from him the sum of \$25.00 and that a copy of said preliminary report is hereto attached marked Exhibit D.

#### XVI.

That on or about September 4, 1951, plaintiff

issued to defendant Chet L. Parker a policy of purchaser's title insurance in the face amount of \$125,000 showing a fee simple title to said Lots 1 and 2 to be in Ethel Winans as of 8 o'clock a.m., August 30, 1951, and that a true copy of said policy of purchaser's title insurance is hereto annexed marked Exhibit E, and that plaintiff on August 30, 1951, accepted from said defendant the sum of \$405.00 in payment of the balance of the premium on said policy of title insurance.

### XVII.

That on September 11, 1952, a cashier's check of the First National Bank of McMinnville in the sum of \$95,000.00 was delivered to Paul Winans by Kenneth Abrahams, attorney, and the deed, a copy of which is hereto annexed marked Exhibit B, was delivered to the said Abrahams with the grantee's name left blank, together with a refund check in the sum of \$4,750.00 on account of the additional acreage reserved to the grantor in said deed and not provided for in said Option of August 11, 1951.

### XVIII.

That subsequent to September 11, 1951, plaintiff issued to Parkers at their request a policy of owner's title insurance in the principal amount of \$125,000 insuring a fee simple title to said Lots 1 and 2 in Chet L. Parker, subject to certain exceptions not herein material, and a copy of which policy is hereto annexed marked Exhibit F, and that no additional premium was charged or paid

for said owner's policy of title insurance, and that at said time said purchaser's policy of title insurance was surrendered by Parker to plaintiff.

XIX.

That at all times herein mentioned subsequent to January 9, 1944, the third-party defendants knew that the United States claimed ownership of the said Lot 2.

Dated this 29th day of December, 1952.

GRIFFITH, PHILLIPS &  
COUGHLIN,

By /s/ JAMES K. BUELL,  
Attorneys for Plaintiff and  
Third-Party Plaintiff.

CAKE, JAUREGUY & TOOZE,

By /s/ NICHOLAS JAUREGUY,  
Attorneys for Defendants Chet L. Parker and Lois  
M. Parker.

RYAN & PELAY,

By /s/ JOHN D. RYAN,  
Attorneys for Defendant  
Walter Stegmann.

KRAUSE & EVANS,

By /s/ DENNIS J. LINDSAY,  
Attorneys for Third-Party  
Defendants.

## EXHIBITS B, C, D, E AND F

“Exhibits B, C, D, E, and F, respectively, referred to in the foregoing Stipulation of Admitted Facts, are attached to the Amended Complaint herein and bear the same identifying exhibit symbol as used in said Stipulation.”

[Endorsed]: Filed January 17, 1953.

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[Title of District Court and Cause.]

## ORAL OPINION

March 16, 1953.

Title and Trust Company, a corporation, plaintiff and third-party plaintiff, v. Chet L. Parker, et al., defendants, v. Paul Winans, et al., third party defendants. Civ. No. 6242.

Because of the many interesting questions of fact and law involved in this case and because of the paucity of decisional law upon many of the questions involved, I had hoped to prepare a formal written opinion in which I would discuss these questions. However, because of the press of other matters, it will be impossible for me to prepare such a written opinion for at least 60 days. Although a written opinion is desirable, I believe that the interests of the parties will be better served by announcing my decision now, together with some of the reasons therefor.

It is undisputed that Parker paid in excess of \$95,000 for the property involved; that he first

obtained a title report and, later, obtained a purchaser's policy, and finally an owner's policy, from the Title and Trust Company insuring the title to this property; that the defendants, Parker and Stegman, did not make any affirmative representations to the Title Company with reference to the condition of title and that the defect in the title could have been discovered by the Title Company by a proper examination of the statutes and records, all of which were available to it.

Ordinarily, under those circumstances, a title company should be required to respond in damages for a failure of title to property covered by its policy. However, under the unusual facts of this case, I am of the opinion that the Title Company is entitled to an order canceling the title insurance policies issued to defendant Chet L. Parker.

This is not a case of an honest mistake. Neither in their pleadings nor in the evidence adduced at the trial did the Parkers admit that they knew of the defect in title until after the full purchase price had been paid and a deed delivered.

Throughout the case, they, as well as Stegman, maintained that they had no knowledge of the defect in title and that neither the Winans nor anyone else had informed them of the claim of the United States to Lot 2. The testimony of the Parkers and Stegman was not corroborated on any material issue by any credible independent evidence. Their own testimony was shown to be false in many particulars and, when not actually controverted, was highly improbable and, at times, fantastic.

On the other hand, the testimony of Paul Winans was corroborated not only by documentary evidence but also by the testimony of a number of disinterested reputable witnesses.

Among the significant dates upon which there was conflicting testimony is the date of August 13, 1951. Two Forest Service employees testified that, on this date, Parker and Stegman came to the Parkdale Forest Ranger Station, where they examined records concerning the Winans property, and were told that the title to this property was in doubt. Their testimony was corroborated by a contemporaneous office memorandum showing that they had talked to two people. Although both Forest Service employees identified Parker and Stegman in the courtroom as the persons who were there on that day, Parker and Stegman each denied that they were there on that day or that they had ever visited the ranger station together for that or any other purpose.

Even more significant is the date of August 18, 1951. Parker testified to conversations that he had on that day with Paul Winans at the Winans' service station concerning the title to the property and his purchase of the option from Stegman. Stegman corroborated Parker's testimony as to his conversation and Stegman's brother corroborated Parker's testimony as to his presence.

On the other hand, Paul Winans testified that he had no such conversation with Parker and that Parker was not even there on that date. Winans'

testimony was corroborated by two employees of the Army Engineers who, at the request of Winans, were surveying the property in controversy.

The evidence contains numerous other instances in which the testimony of the Parkers and Stegman was diametrically opposed to the testimony of the other witnesses and in practically every instance I have come to the conclusion that the testimony of the Parkers and Stegman was false.

Parker contended that Stegman was not his agent and that he had purchased the option on the Winans' property from Stegman for \$20,000. This is a fantastic story. It starts with an alleged one-year 4% loan by the Parkers to Stegman of \$22,000, delivered to him in currency, and secured by an unrecorded chattel mortgage on old equipment worth considerably less than the amount of the loan. The equipment was not checked and it was not insured against fire or other casualty. The Parkers testified that this alleged loan was made on November 20, 1950, solely for the purpose of earning interest on their surplus money, and that the money was first kept in a safe deposit box and later moved to their home. Stegman allegedly borrowed this amount to enable him to speculate in timber. The Parkers, although constantly in the market for timber, had no agreement with Stegman that they were to be given any preference in the purchase of timber acquired by Stegman with this money.

Other evidence adduced at the trial showed that, during this period, Stegman was financially involved, if not actually insolvent.

Stegman's explanation of how he used this money is equally fantastic. No portion of the money was ever deposited in a bank account or kept in a safe deposit box. \$11,000 was used to rock a road on his father's farm. This amount was paid in cash to a contractor, whose name he does not remember and from whom he did not obtain a receipt.

The testimony of Stegman with reference to the manner in which he used the balance of the loan was equally vague and improbable. In May, 1951, he entered into a \$10,000 credit arrangement with the Parkers to enable him to purchase timber. This arrangement contemplated that Stegman could issue checks as the maker on the First National Bank of McMinnville, Oregon, although he did not maintain an account in that bank. (In fact he did not maintain an account at any bank.) These checks were to be honored by the bank and debited to Parker's account. On August 11, 1951, Stegman, pursuant to such arrangement, issued a check to Ethel Winans for \$1,000 as consideration for the option. The option agreement called for another payment of \$4,000 within 7 days, and another payment of \$95,000 within 90 days.

Parker testified that, on August 12, he first learned about the option from Stegman and that, on the following day, he went to Hood River County to inspect the property. It is not clear whether he ordered the title report immediately before or immediately after he inspected the property. The Parkers testified that, on the same evening, they drove to Stegman's apartment at The Dalles, Ore-

gon, and, after some bargaining, purchased Stegman's option for \$20,000 and, in payment thereof, gave Stegman a check for \$25,000. They explained the discrepancy by testifying that Stegman believed he was getting \$25,000 for the option. He did not realize until later that his agreement to reimburse the Parkers for the \$1,000 check already issued, as well as the \$4,000 check which he would be required to pay on account of the option, would only result in a profit to him of \$20,000. On August 18, Stegman did give Winans a check for \$4,000 drawn on the First National Bank at McMinnville which was honored by that bank and charged to one of Parker's accounts.

In other words, the Parkers gave Stegman, an insolvent, a check for \$25,000, which he was at liberty to cash at any time thereafter, even though they had agreed to pay only \$20,000 for the option and even though they had already paid Stegman's check for \$1,000 and knew that they would have to pay the \$4,000 check which Stegman was required to pay to Winans in order to keep the option alive.

A mere recital of the testimony reveals its improbability and, when it is considered with the other testimony of these same witnesses, it becomes incredible. At the time the Parkers delivered the \$25,000 check to Stegman:

1. Parker had ordered, but not received, the title report.

2. Parker was interested in the property only because of its timber and yet he had made only a cursory examination of that timber.

3. Parker had not talked to any member of the Winans family.

4. The Parkers loaned Stegman \$22,000 in November, 1950, which had not been repaid. On May 1, 1951, the Parkers had entered into the \$10,000 credit arrangement with Stegman to enable Stegman to purchase timber.

5. Stegman did not cash the check but carried it in his pocket until September 19 or 20, 1951, when he endorsed and returned it to the Parkers who, in turn, deposited the check in their own account.

At the deposition Stegman testified that he had cashed the check and used the proceeds to pay bills. Apparently he was "confused" because a short time later, he corrected that statement and, at the trial, he corroborated the testimony of the Parkers that he had returned the check to the Parkers, after Mr. Parker had become angry because of the title defect in the property covered by the option. However, all of them agreed that the check was returned on condition that full credit was to be allowed Stegman on the \$22,000 note and his other indebtedness to the Parkers.

Perhaps it is only a coincidence that September 20, the date upon which the \$25,000 check was deposited in Parker's account, is the same day upon which representatives of the Title Company met

with the Parkers and their attorneys to discuss settlement.

The Parkers and Stegman admitted that they had entered into a few other business transactions among themselves prior to the Winans transaction, but they denied any such business dealings subsequent thereto. However, the evidence conclusively shows that Stegman had been an agent for, or a joint venturer with, the Parkers on many other occasions and that their business relationship did not terminate with this transaction.

During the settlement negotiations with the Title Company, Parker represented that the property cost him \$120,250. I found that he paid \$95,250 but, according to his own testimony, the property did not cost him \$120,250 but only \$115,250 because he paid Stegman \$20,000 for the option.

Although the purchase price covered both Lots 1 and 2, the title defect only affected Lot 2. However, on the basis of negotiations which the Parkers had with Multnomah Plywood in which they offered the entire property for \$180,000, the Parkers claimed that Lot 2 had a reasonable market value of at least \$125,000 and they claimed that amount as damages.

The testimony of the Parkers and Stegman with reference to the \$22,000 loan and the purchase from Stegman of the option for \$20,000, all of which I find is false, not only proves that Stegman was either an agent, or a joint venturer with, the Parkers; but, viewed in the light of the other testimony, shows a conspiracy to defraud the Title Company.

Prior to the time Stegman obtained the option from Winans, the Parkers and Stegman all knew of the claim of the United States to Lot 2. When the Title Company issued its preliminary report and its purchaser's policy, they knew that the Company had overlooked this defect in the title and they knowingly failed to divulge this information for the purpose of perpetrating a fraud on the Title Company.

By making a fictitious sale of the option from Stegman to Parker for \$25,000 (later reduced to \$20,000), they attempted to avoid being chargeable with the knowledge which Stegman had of the defect and, at the same time, to build up the cost to Parker in order to increase his claim for damages if the Title Company discovered the defect prior to the time the property was sold. However, if they were successful in selling the property to Multnomah Plywood or some other purchaser, they could realize a greater profit (\$25,000 of which would be tax free to the Parkers, who were in a high income tax bracket) and the loss to the purchaser, by reason of the title defect, would be borne by the Title Company.

On or about the 4th day of September, 1951, Parker received the purchaser's title insurance policy from the Title Company. At that time, he knew of the defect in the title to Lot 2. Such policy contains the following condition:

“Upon receipt of notice of any defect, lien, or

encumbrance hereby insured against, the insured shall forthwith notify the company thereof in writing."

In my opinion, his failure to notify the company of such defect prior to September 11, the date upon which the balance of the purchase price was paid, is an unreasonable delay and constitutes a breach of such condition. Under this theory, Parker would be entitled to recover the \$5,000, the amount paid on account of the purchase price prior to September 4. However, by reason of my other findings, he is entitled to no more than the return of his premium.

After the title company discovered the defect, there were settlement negotiations between the Title Company and the Parkers. During these negotiations, the Parkers represented to the Title Company that they had paid \$120,250 for Lots 1 and 2 when, in fact, they had only paid \$95,250. In my opinion this was a material misrepresentation made with intent to defraud the Title Company and the Title Company may avoid the policy on that ground.

The most troublesome problem in this case is whether or not the Winans family is entitled to recover damages for slander against Parker. During the negotiations between Parker and representatives of the Title Company, Parker informed them that the Winans family did not divulge the defect in the title and represented that they had good title.

Likewise each of the proposed contracts of settlement between the Parkers and the Title Company contained the following paragraph:

“Whereas the Parkers have represented to the company and hereby warrant that they had no knowledge of any defect in the title to said Lot 2 prior to their payment of the purchase price therefore and acceptance and recording of the deed to said property.”

Although none of these contracts were executed, the Parkers and their attorneys read at least one of the proposed contracts which contained such paragraph. Neither at that time nor at any other time did the Parkers object to the inclusion in the contract of such paragraph. In fact, their then attorney testified that all the negotiations were precipitated on the lack of knowledge of the title defect by the Parkers.

All of these proposed contracts authorized the attorneys for the Title Company to commence and prosecute a suit by the Parkers against the Winans family to rescind the sale. The Parkers objected to this paragraph. They insisted that the Title Company file such suit in its own name. Therefore, the Parkers knew that, if they did not permit a suit to be filed in their names, the Title Company, if it paid the loss, would do it. The Parkers also knew that the filing of such a suit would not only subject the Winans family to adverse publicity in both Portland and Hood River but also would require the Winans family to incur expenses to defend it.

§ 23-550 Oregon Compiled Laws Annotated reads as follows:

“If any person shall falsely represent that he is

the owner of any land to which he has no title, or shall falsely represent that he is the owner of any interest or estate in any land, and shall execute any conveyance of the same with intent to defraud anyone, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than 6 months nor more than 2 years."

If the representations of the Parkers to the Title Company were true, then Ethel Winans, and no doubt Paul Winans, would be guilty of having violated the Oregon Statute. A false statement which imputes a charge which, if true, would subject a person charged to indictment for a crime involving moral turpitude or subject him to infamous punishment is slanderous *per se*.

Although the evidence did not show that any of such statements were made by Stegman to the Title Company, in view of my finding that the Parkers and Stegman had entered into a conspiracy to defraud the Title Company, the false statements of the Parkers to the Title Company, which were merely part of the plan to defraud the Title Company, make Stegman equally liable with the Parkers.

In my opinion, therefore, the Winans are entitled to a judgment against the Parkers and Stegman for the damages they incurred as a result of the slander.

The Winans family have suffered damages at least equal to the amount of attorney fees which they incurred in defending this action.

Throughout this oral opinion, I have referred to a defect in the Winans title to Lot 2. There is no substantial dispute that title to Lot 2 is in the United States. Therefore, it would have been more correct to have used the words "failure of title" instead of "title defect." In the Findings of Fact, I suggest that it be made clear that the United States is the owner of Lot 2 and that Winans had no title to such lot.

During the trial, the parties stipulated that I could determine the amount of attorney fees to which any party was entitled and that, after determining liability, I would hear testimony as to the amount of work performed by such attorneys. The Winans family agreed to pay their attorneys a reasonable fee. In accordance with such stipulation, I will hear evidence as to the time spent and the amount of work performed by the attorneys for the Winans family. Such amount or such portion of the work which I believe should be chargeable to the Parkers will be awarded the Winans not as attorney fees but as damages for the slander.

This oral opinion, although much longer and more detailed than I had anticipated, is not intended to cover all of the material facts which should be included in the Findings. The attorneys for the Title and Trust Company shall submit Findings of Fact and Conclusions of Law on all issues raised by the pleadings.

Received January 15, 1954, U.S.C.A.

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action came on regularly for trial before the undersigned, one of the judges of the above-entitled court, upon the issues defined in the pleadings herein. Plaintiff appeared by its attorneys, James K. Buell and Manley B. Strayer. Defendants Chet L. Parker and Lois M. Parker appeared by their attorney, Nicholas Jaureguy. Defendant Walter Stegmann appeared by his attorney, John D. Ryan. Third-party defendants, Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans, appeared by their attorneys, Gunther Krause and Dennis Lindsay. Testimony and evidence were offered by each of the parties and received by the court and the court having considered the evidence and the arguments of counsel and all matters of fact and law pertinent to the issues, and being now fully advised, makes the following

### Findings of Fact

#### I.

At all times material herein plaintiff was and now is a corporation organized under the laws of the State of Oregon and authorized thereby to engage in the business of insuring title to real property.

#### II.

Defendants Chet L. Parker and Lois M. Parker

are husband and wife and at the time of commencement of this action were and now are residents of the State of Washington.

### III.

Defendant Walter Stegmann, at the time of commencement of this action, was and now is a resident of the State of Washington.

### IV.

Third-party defendants, Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans, at the time of the commencement of this action, were and now are residents of the State of Oregon.

### V.

The amount in controversy between plaintiff and defendants Parker and between plaintiff and defendant Stegmann in each instance exceeds the sum of \$3,000.00, exclusive of interest and costs and attorney fees. All parties herein have waived jury trial as to all issues involved herein.

### VI.

By Act of Congress of February 14, 1859, 11 Stat. at Large 383, Chap. 33, Section 4, by which Oregon was admitted as a state of the United States of America, contains the following provision:

“That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any

part thereof, has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools.”

This language has not been construed literally by the United States Supreme Court, *U. S. v. Morrison*, 240 U. S. 192 (1915).

## VII.

At the time of the admission of the State of Oregon into the United States of America, the following-described property was a part of the public lands of the United States of America and said property had not been sold or otherwise disposed of and no patent was ever issued on said property by the United States of America:

The NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian, in Hood River County, Oregon (hereinafter referred to as Lot 2).

## VIII.

On June 17, 1892, all public lands within Section 16, Township 1 South, Range 8 East, of the Willamette Meridian were set apart and included within that portion of the Mt. Hood National Forest known as the Bull Run Timber Reserve by proclamation of the President of the United States. On said date Lot 2 above described had not been identified by survey and by reason thereof title to the same did not pass to the State of Oregon but remained in the United States, which at all times has

been and now is the owner of Lot 2. The claim to and the ownership of Lot 2 by the United States and the basis thereof were not at any time matters of record in the official real property records of Hood River County, Oregon, although such information was available in various state and Federal offices but not within Hood River County. During the year 1951 and prior thereto the official real property records of Hood River County, Oregon, disclosed a perfect chain of title from the State of Oregon to Ethel Winans.

## IX.

On February 11, 1889, the State of Oregon, believing that it was the owner of Lot 2 by virtue of said Act of Congress, deeded said property, together with Lot 1 in said Section 16, Township 1 South, Range 8 East, of the Willamette Meridian, Hood River County, to C. A. Macrum, who in turn, in 1902, deeded the same to W. R. Winans, the father of third-party defendants. On or about December 29, 1943, the said W. R. Winans and Mary Winans, husband and wife, conveyed the said Lots 1 and 2 to the defendant Ethel Winans under an oral trust for the benefit of said W. R. Winans and Mary Winans during their lifetime, and thereafter for the benefit of other members of the Winans family at the discretion of the said trustee; and subsequent to the sale of the said Lots 1 and 2 and the delivery of the deed therefor on September 11, 1951, as hereinafter described, the third-party defendants have received portions of the money paid for said

premises. From February 11, 1889, to date said Lots 1 and 2 were carried on the tax rolls of Hood River County, which has assessed, levied and collected real property taxes, including fire patrol assessments thereon, and said taxes were regularly paid from tax years 1902-1903 through and including 1950-1951 by W. R. Winans and by Ethel Winans or by Paul Winans on behalf of the third-party defendants and others.

### X.

Sometime prior to July 30, 1907, the State of Oregon selected the northwest one-quarter (NW $\frac{1}{4}$ ) of the northwest one-quarter (NW $\frac{1}{4}$ ) of Section 28, Township 20 South, Range 21 East, W.M. as lieu lands for the said Lot 2, and on July 30, 1907, the Commissioner of the General Land Office of the Department of the Interior of the United States of America officially approved said selection of lieu lands.

### XI.

On or subsequent to July 30, 1907, the State Land Board of the State of Oregon tendered to W. R. Winans the consideration paid by Winans' predecessor in title to the State Land Board for said Lot 2.

### XII.

In December, 1943, third-party defendants, Paul Winans and Ethel Winans, obtained from Pacific Abstract and Title Company a policy of title insurance on Lots 1 and 2 insuring title in such property in Ethel Winans. Thereafter and in 1944, as a result of negotiations between the third-party defend-

ants and the Forest Service of the United States Department of Agriculture, for the exchange of said Lots 1 and 2 for certain United States timberlands, the United States claimed ownership of said Lot 2, as a result of which the third-party defendants filed a claim with the said Pacific Abstract and Title Company under said policy on account of the unmarketability of the title of the said Ethel Winans to said Lot 2, and thereafter received the sum of \$3,000.00 in full settlement and discharge of said claim, in connection with which the said company waived all of its rights and claims of every kind to said Lot 2 as against the said Ethel Winans, her heirs and assigns, the United States and the State of Oregon, and to any moneys recovered or recoverable from Hood River County by reason of taxes theretofore paid on said Lot 2. At the time third-party defendants Paul Winans and Ethel Winans obtained such policy of title insurance, they had some information concerning the fact that the United States claimed ownership to Lot 2, and said third-party defendants did not disclose such information to such title company.

#### XIV.

Subsequent to the claim of ownership by the United States to said Lot 2 and the settlement of the said policy of title insurance thereon, the third-party defendants were advised that it would require a special act of Congress to give them a marketable title thereto, and they retained the services of an attorney to secure the passage of such legislation.

## XV.

During the month of July, 1951, and extending until and including August 11, 1951, the defendant Stegmann negotiated with the third-party defendant Paul Winans initially for the purchase of Lot 1 and later for the purchase of Lot 2 as well as Lot 1. During the course of said negotiations the defendant Stegmann represented that he wanted to purchase said premises as a private mountain retreat for himself and his family, and at no time indicated that he was acting on behalf of the defendants Parker. In these negotiations, third-party defendant Paul Winans made a full disclosure to the defendant Stegmann concerning the claim of ownership of the United States to Lot 2, advising Stegmann that the United States asserted that title thereto had never passed from the United States to the State of Oregon because it had not been surveyed. The third-party defendant Paul Winans also made a complete disclosure concerning the policy of title insurance which Ethel Winans had previously obtained on said Lot 2 from Pacific Abstract and Title Company and the settlement which they had obtained by reason of the claim of ownership asserted by the United States to Lot 2.

## XVI.

During the early stages of the negotiations between third-party defendants Winans and defendant Stegmann, the third-party defendants offered to sell Lot 1 for \$80,000.00 and later offered to sell

Lot 1 for \$80,000.00 and their interest in Lot 2 for \$20,000.00. Later it was agreed that the Winans would sell their interest in both lots as a unit for \$100,000.00. At the time the option hereinafter set forth was executed, the third-party defendants did not place separate valuations on Lot 1 and their interest in Lot 2 which they agreed to transfer to defendant Stegmann. Such option agreement, which was drafted by third-party defendant Paul Winans and which he and his sister, Ethel Winans, executed and delivered to defendant Stegmann, reads as follows:

“On or before seven days after date hereof, for and in consideration of the sum of \$1,000.00, the receipt of which is hereby acknowledged, I, Paul Winans, acting as the duly authorized agent of Ethel Winans, et al., hereinafter designated as The Sellers, agree and promise to sell to Walter Stegmann, his heirs or assigns, hereinafter designated The Buyer, at his option, the following-described real property:

“NW $\frac{1}{4}$ , NE $\frac{1}{4}$  (Lot 1), containing 25.88 acres, and NE $\frac{1}{4}$ , NW $\frac{1}{4}$  (Lot 2), containing 40 acres, more or less, in Section 16, Township 1 South; Range 8 East, Willamette Meridian in Hood River County, Oregon, excepting .88 acres located along and adjacent to the meandered water shore line of Lost Lake and which shall be selected, measured and staked out on boundaries mutually agreed upon on or before the expiration date of this option.

“For the total sum of \$100,000.00 to be paid as follows:

Credit by check subject to collection paid on option herewith.....	\$ 1,000.00
Payment on even date of written notice of election of The Buyer to purchase under this option.....	4,000.00
Final payment to be made on even date of delivery of deed to above-described land by The Seller on or before ninety days from date hereof.....	95,000.00
<hr/>	
Total .....	\$100,000.00

“For which The Seller agrees to deliver a good and sufficient deed of conveyance showing title free and clear of all mortgage, contract, judgment or tax liens, conveying to The Buyer all the right, title and interest of The Sellers to the above-described real property.”

In connection with the delivery of said option, the defendant Stegmann delivered a check drawn by him on The First National Bank of McMinnville in the sum of \$1,000.00, for the first payment as provided in said option.

## XVII.

On August 13, 1951, the defendants Chet L. Parker and Stegmann visited the United States Forest Service Ranger Station at Parkdale, Oregon, and at such time representatives of the United States Forest Service showed them records con-

cerning Lot 2 and advised them that the title thereto was in question.

### XVIII.

On August 18, 1951, and within the time specified in the option described above, the defendant Stegmann met with third-party defendants and personally executed a document drawn by the third-party defendant Paul Winans whereby Stegmann gave written notice of his election to exercise the option of August 11, 1951; and in connection therewith the defendant Stegmann delivered a check drawn by him on The First National Bank of McMinnville in the sum of \$4,000.00. Neither of defendants Parker was present at said meeting and the third-party defendants did not have any knowledge that the defendant Stegmann was acting on behalf of defendants Parker.

### XIX.

The \$1,000.00 payment on August 11 and the \$4,000.00 payment on August 18 were each made by a check drawn by Stegmann on The First National Bank of McMinnville, Oregon. At said times Stegmann had no account in said bank or in any bank and the checks were, by direction of the defendants Parker, debited to one of their accounts in said bank.

### XX.

On August 13, 1951, defendants Parker applied at the Hood River office of plaintiff for a title report on said Lots 1 and 2. At said time the defendants Parker gave to plaintiff a memorandum

containing the description of said property and the name of Ethel Winans as record owner.

### XXI.

On August 16, 1951, plaintiff delivered to the defendants Parker a report as to the title of said Lots 1 and 2 showing title to the same to be in Ethel Winans and received from the defendants Parker the sum of \$25.00. At said time defendants Parker informed plaintiff that their purchase of the property was subject to a timber cruise.

### XXII.

On August 27 or 28, 1951, the defendant Chet L. Parker was introduced to the third-party defendant Paul Winans by the defendant Stegmann as a friend of the defendant Stegmann who had some surveying experience; and, on August 31, while on a surveying party on the premises, the third-party defendant Paul Winans, although not knowing that the defendant Chet L. Parker was interested as a principal in acquiring the interest of the third-party defendants in said Lots 1 and 2, discussed with defendant Chet L. Parker the nature and basis of the claim of ownership of the United States to Lot 2 and the settlement of the policy of title insurance previously issued on said Lot 2 by reason of said claim of the United States.

### XXIII.

On August 30, 1951, defendants Parker applied at the Hood River office of plaintiff for a purchaser's

policy of title insurance in the amount of \$125,000.00 and left with the plaintiff an assignment of said option from Stegmann to the defendant Chet L. Parker, dated August 13, 1951, and reciting that \$25,000.00 had been paid for said assignment and that the valuation of Lot 1 was \$35,000.00 and the valuation of Lot 2 was \$90,000.00.

#### XXIV.

On or about September 4, 1951, plaintiff issued to the defendant Chet L. Parker a policy of purchaser's title insurance in the face amount of \$125,000.00 showing a fee simple title to Lots 1 and 2 to be in Ethel Winans as of 8:00 o'clock a.m. August 30, 1951, and received from said defendant the sum of \$405.00 in payment of the balance of the total premium of \$430.00 on said policy of title insurance. Prior to the issuance of plaintiff's purchaser's title insurance policy, defendant Chet L. Parker, on August 29, 1951, furnished the Portland office of plaintiff for its inspection a copy of the option agreement executed by Paul Winans and Ethel Winans in favor of defendant Stegmann, together with an assignment of such option to defendant Chet L. Parker, and on the following day mailed to plaintiff's Hood River office the assignment of such option.

#### XXV.

On September 8 and 10, 1951, the defendant Stegmann and the third-party defendant Paul Winans and others met to draft the language of the deed and to agree upon a description of the area

to be reserved to third-party defendants. On said occasions the third-party defendant Paul Winans again reviewed and discussed with the defendant Stegmann the claim of ownership of the United States to Lot 2 and again offered to assist Stegmann in clearing the title to Lot 2 through Congressional action. In the course of said discussion the attorney for third-party defendants suggested that they consult with plaintiff's Hood River manager for the purpose of checking the legal sufficiency of the description of the reserved area. Such consultation was not held because of defendant Stegmann's objections. At the conclusion of said meeting on September 10, a deed was prepared and was executed by the third-party defendant Ethel Winans, in which deed the name of the grantee was left in blank at the request of the defendant Stegmann.

## XXVI.

On September 11, 1951, the third-party defendant Paul Winans and his attorney, Vauter Parker, met with Kenneth Abraham, another Hood River attorney. Kenneth Abraham had been employed by defendants Parker to act for them in connection with the closing of the transaction, but he was not employed by them to obtain information regarding the title to Lot 2. Neither Paul Winans nor Vauter Parker was aware of the fact that Kenneth Abraham had been employed by defendants Parker in connection with this transaction. They were under the impression that he was acting on behalf of de-

fendant Stegmann. During such meeting, third-party defendant Paul Winans and his attorney delivered said executed deed and a refund check, in the sum of \$4,750.00 for additional acreage retained by the third-party defendant not provided for in the option of August 11, 1951, in exchange for a cashier's check drawn on the First National Bank of McMinnville in the sum of \$95,000.00. Said cashier's check was issued by the First National Bank of McMinnville at the request of defendants Parker and was paid for by defendants Parker. The only people present at such meeting were Kenneth Abraham, defendant Paul Winans, and Vauter Parker. At such meeting and during the time that both the cashier's check and the deed were on the desk of Vauter Parker, the third-party defendant Paul Winans advised Kenneth Abraham that the United States claimed ownership of Lot 2 and offered to assist in attempting to clear said title by an act of Congress. Kenneth Abraham thereafter delivered the executed deed to defendants Parker and informed them of the statements made to him by third-party defendant Paul Winans. Defendants Parker, on receiving said executed deed from their attorney, caused the name of Chet L. Parker to be filled in as the grantee in such deed and defendants Parker caused it to be recorded in the deed records of Hood River County, Oregon.

## XXVII.

Prior to the payment of said balance of the purchase price and delivery of the deed, it had been

agreed between plaintiff and defendants Parker that upon the final closing of the transaction plaintiff would exchange its purchaser's policy of title insurance for an owner's policy in the same amount without additional charge. On September 12, 1951, at the request of defendants Parker, plaintiff issued to said defendants a policy of owner's title insurance in the principal amount of \$125,000.00 insuring a fee simple title to said Lots 1 and 2 in Chet L. Parker, subject to certain exceptions not herein material. At said time the purchaser's policy of title insurance previously issued was surrendered by defendants Parker to the plaintiff and no additional premium was charged or paid for said owner's policy of title insurance.

### XXVIII.

In negotiating for and acquiring said option from third-party defendant Ethel Winans and in all subsequent transactions relative to said property, the defendant Stegmann acted as the duly authorized agent of defendants Parker and within the scope of his employment. During all of said negotiations and subsequent transactions the defendant Stegmann represented to third-party defendants Winans that he was acting in his own name for his own account, and the defendants Stegmann and Parkers concealed from third-party defendants Winans the fact that Stegmann was the mere agent for defendants Parker, who were undisclosed principals. Third-party defendants Winans did not learn that defendants Parker had any interest in the transac-

tion or purchase of said property until after the purchase price had been paid and the deed delivered and recorded.

### XXIX.

At all times defendants Parker concealed from the plaintiff the fact that the defendant Stegmann had acted as their agent in the transactions relating to said property, and the plaintiff did not learn of such agency relationship until after the commencement of this action.

### XXX.

At all times during the negotiations for and the purchase of said property, the defendants Stegmann and Parkers knew that the United States claimed title to said Lot 2, based upon the fact that the land had not been surveyed and consequently that title had never passed from the United States to the State of Oregon; that third-party defendants Winans had previously obtained a policy of title insurance on said property from Pacific Abstract Title Company showing Ethel Winans as the owner and had collected a substantial loss on such policy by reason of the Government's ownership of Lot 2; and that third-party defendants Winans had been advised that an act of Congress would be required to give them marketable title to such property.

### XXXI.

At no time did defendant Stegmann make any affirmative representations to plaintiff with respect to the condition of the title to Lot 2.

## XXXII.

At no time prior to the date upon which defendants Parker were issued plaintiff's owner's title insurance policy did the defendants Parker make any affirmative representations to plaintiff with respect to the condition of the title to Lot 2.

## XXXIII.

Although defendants Parker had been informed by Paul Winans that the United States claimed ownership to Lot 2, and by representatives of the United States Forest Service that the title to Lot 2 was questionable, defendants Parker would not have directed defendant Stegmann to pay the sum of \$4,000.00 to third-party defendants Paul Winans and Ethel Winans except for the fact that the plaintiff's preliminary title report showed good title in Ethel Winans, and defendants Parker would not have paid third-party defendants Paul Winans and Ethel Winans the balance of the purchase price without having first received the purchaser's policy and assurances from plaintiff that it would issue an owner's policy after a deed executed by third-party defendant Ethel Winans in favor of defendant Chet L. Parker was recorded. The issuance of such report and such title policies was a necessary element in the scheme of defendants Parker and defendant Stegmann to defraud the plaintiff.

## XXXIV.

At all times during the negotiations for and subsequent transactions relative to said Lots 1 and 2,

the third-party defendant Paul Winans acted on behalf of himself and of the other third-party defendants and was known to be so acting by the defendants Parker and Stegmann. At no time herein mentioned did the third-party defendant Paul Winans or any other third-party defendant represent to the defendant Stegmann or the defendants Parker that the third-party defendants had a marketable title to said Lot 2, nor was any representation made by the third-party defendants to the defendants Parker or Stegmann that the claim of ownership of the United States to Lot 2 was inconsequential and minor and without basis in fact.

### XXXV.

On or about August 16, 1951, the defendants Parker and Stegmann, knowing of the status of the title to Lot 2 and that plaintiff had not discovered the defect of title in Ethel Winans, entered into a conspiracy to defraud the plaintiff by inducing the plaintiff to issue to defendants Parker a policy of title insurance on said property in an amount greater than its actual value and to collect the amount of such insurance from the plaintiff on account of the failure of title to Lot 2.

### XXXVI.

Pursuant to said conspiracy and in furtherance thereof, defendant Stegmann executed and delivered to defendants Parker the assignment of option above referred to and on August 30, 1951, defendants Parker represented to plaintiff that said as-

signment was the basis of the interest of defendant Chet L. Parker in the property; that defendant Chet L. Parker had purchased the option from Stegmann and had paid him \$25,000.00 therefor; that the value of Lot 1 was \$35,000.00 and the value of Lot 2 was \$90,000.00. At the time said representations were made the defendants well knew that such representations were false in that defendants Parker had not paid to Stegmann \$25,000.00 or any other sum for said assignment; that, although at the time the option agreement was executed, the parties agreed on a purchase price of \$100,000.00 for all of the Winans' interest in both Lots 1 and 2, in the preliminary negotiations, third-party defendants Winans had placed a valuation of \$80,000.00 on Lot 1 and a valuation of \$20,000.00 on whatever interest the Winans family might have in Lot 2 which they were willing to sell. Said assignment of option was a sham and was executed and delivered to plaintiff for the purpose of deceiving it as to the amount paid for the property, the value of Lots 1 and 2 and the relationship between defendants Parker and Stegmann, and of inducing plaintiff to issue a title insurance policy in the amount of \$125,000.00.

### XXXVII.

Pursuant to said conspiracy and in furtherance thereof, defendants Parker wilfully and intentionally concealed from and failed to disclose to the plaintiff their knowledge respecting the defect in

title to Lot 2 and the various circumstances attendant thereon, knowing at said time that the plaintiff had failed to discover such title defect and that it would issue its title insurance policy in ignorance thereof.

### XXXVIII.

Pursuant to said conspiracy and in furtherance thereof, and for the purpose of preventing plaintiff from learning of such title defect from the Winans family, defendants Parker and Stegmann concealed from the Winans family the fact that defendants Parker were the persons negotiating for the purchase of Lots 1 and 2 and that they were obtaining title insurance on such property and third-party defendants and their attorney did not discuss the description of the reserved acreage with the plaintiff because of defendant Stegmann's objection.

### XXXIX.

Plaintiff issued its policy of purchaser's title insurance without knowledge of such failure of title to Lot 2, believing that title to all of such property was vested in Ethel Winans and that defendants Parker had contracted to purchase the same for \$125,000.00, and in reliance upon the examinations which it made of its own records and the public records of the State of Oregon. It also relied upon the apparent good faith of defendants Parker and its belief that defendants Parker knew of no fact or circumstance which would impair the title to said property.

## XL.

The defect in the title to Lot 2 could have been discovered by plaintiff by a proper examination of the statutes and records, all of which were available to it, and its failure to discover this defect of title was negligence on its part.

## XLI.

On or about September 12, 1951, plaintiff learned from a representative of the United States Forest Service that the United States claimed title to Lot 2. Plaintiff thereupon advised defendants Parker of such claim and defendants Parker then falsely represented to the plaintiff that they knew nothing of any claim of ownership by the United States. In reliance upon such representations and believing that defendants Parker had acted in good faith throughout the transaction, plaintiff issued to defendants Parker its owner's policy of title insurance in the amount of \$125,000.00 in lieu of said purchaser's policy of title insurance. Said representations were made by defendants Parker with the intention that plaintiff should rely thereon and for the purpose of defrauding plaintiff by concealing from it the existence, purpose and details of the conspiracy between them and defendant Stegmann and to induce plaintiff to issue said owner's title insurance policy.

## XLII.

The purchaser's policy of title insurance contained the following provision:

“Upon receipt of notice of any defect, lien or encumbrance hereby insured against, the insured shall forthwith notify the company thereof in writing.”

Although defendants Parker knew of the defect in title to Lot 2 on September 4, 1951, the date on which said purchaser's policy was issued and knew that it was substantial, they failed to give any notice whatever thereof to plaintiff prior to September 11, when final payment of the purchase price was made. Such failure to notify prior to September 11 was unreasonable and materially prejudicial to the plaintiff and constituted a breach of such policy provision.

#### XLIII.

Following discovery of the defect in title to Lot 2 by the plaintiff, defendants Parker presented a claim of loss to the plaintiff and said parties entered into settlement negotiations. During such negotiations Parkers falsely represented to the plaintiff that they had paid \$120,250.00 for Lots 1 and 2 when they had in fact paid only \$95,250.00 for said property. Defendants Parker also represented to the plaintiff that the third-party defendants had not divulged to them any defect in the title to Lot 2 or disclosed their knowledge of the claim of ownership of the United States to Lot 2. The defendants Parker also by their words and conduct wilfully and intentionally induced the plaintiff to believe that the third-party defendants had represented themselves to be the owners of Lot 2 and to have a good title thereto. Said misrep-

representations were material and were made with intent to defraud the plaintiff, and with the knowledge that the probable consequences of such false representations made to plaintiff would injure third-party defendants Winans.

#### XLIV.

After the commencement of this action defendants Parker filed herein a counterclaim against plaintiff based upon said policies of title insurance. Thereafter a third-party complaint was properly filed by plaintiff against third-party defendants Winans, to which third-party complaint said third-party defendants filed an answer and cross-claim against defendants Parker and Stegmann to recover damages for engaging in a conspiracy to defraud the plaintiff and the third-party defendants and to defame the names and reputations of the third-party defendants. All parties hereto have stipulated that said cross-claim may be determined in this action. Third-party defendants also filed a counterclaim against plaintiff but abandoned the same at the conclusion of the trial.

#### XLV.

Said representations of defendants Parker to plaintiff in connection with their claim for loss constituted slander of third-party defendants Winans by imputing to them the commission of a crime within the meaning of Section 23-550, O.C.L.A., by having falsely represented that they were the owners of land to which they had no title and by a

conveyance of such land with the intent to defraud defendants.

#### XLVI.

Said representations by defendants Parker to plaintiff concerning the third-party defendants were made with the knowledge that the plaintiff would institute legal proceedings against the third-party defendants and that the third-party defendants would be subject to adverse publicity in Portland and in Hood River and would require them to incur expenses to defend such proceedings and to clear their names and reputations of false imputations of crime and dishonesty cast upon them by the defendants. Thereafter plaintiff did institute the present suit in which the complaint charged that the third-party defendants falsely represented they were the owners of a marketable title to Lot 2 and that none of the third-party defendants disclosed to the defendants Parker and Stegmann the claim of ownership of the United States to Lot 2 or the settlement of the policy of title insurance issued by the Pacific Abstract Title Company on Lot 2 as a result of said claim of the United States. These charges were copied and published by a newspaper at Hood River, Oregon, and given wide circulation in Hood River, Oregon, and in the surrounding area where the third-party defendants reside. Said representations by the defendants Parker were made pursuant to and in furtherance of the conspiracy between said defendants and the defendant Stegmann to defraud the plaintiff.

#### XLVII.

Such false representations made by defendants

Parker were largely responsible for the inclusion of third-party defendants Winans as defendants in the original action filed by plaintiff. Such action and the publicity which it received in both the Portland and Hood River newspapers caused injury and damage to the third-party defendants Winans in that it not only required them to expend their own time in the preparation and trial of this case but also required them to employ and pay for the services of attorneys to represent them in such action. Such action and publicity resulting therefrom likewise made it more difficult for third-party defendants Paul Winans and Linnaeus Winans to obtain credit in connection with their respective businesses.

#### XLVIII.

As the result of such injurious falsehoods and such slanderous statements, the third-party defendants Winans suffered damages in the sum of \$9,000.00.

Based on the foregoing Findings of Fact, the court makes the following:

#### Conclusions of Law

##### I.

The Court has jurisdiction of the parties and of the subject matter of the causes of action, counter-claims and cross-claims herein.

##### II.

The equities are with the plaintiff and against the

defendants Chet L. Parker, Lois Parker and Walter Stegmann.

### III.

In all negotiations for the purchase of said property defendant Stegmann acted as the duly authorized agent of defendants Parker and communications received by him were within the scope of his authority.

### IV.

The misrepresentations and concealment of material facts by defendants Parker and defendant Stegmann in inducing plaintiff to issue the policies of title insurance and in connection with their claim of loss on said policies constituted fraud entitling plaintiff to a decree canceling and setting aside each of said policies of insurance upon return of the premium therefor by depositing the same in the registry of this court. The amount of such premium to be returned is the sum of \$430.00 with interest at six per cent per annum or \$25.00 thereof from August 16, 1951, and on the balance of \$405.00 from August 30, 1951.

### V.

Third-party defendants Winans are entitled to judgment against defendants Parker and Stegmann in the sum of \$9,000.00.

### VI.

The third-party complaint of plaintiff against the third-party defendants should be dismissed with prejudice.

VII.

The cross-claims of the defendants Chet L. Parker and Stegmann against the third-party defendants Winans should be dismissed with prejudice.

VIII.

The counterclaims of defendants and of third-party defendants against plaintiff should be dismissed with prejudice.

IX.

Plaintiff is entitled to judgment against defendants Parker and Stegmann for its costs and disbursements herein.

X.

Third-party defendants are entitled to judgment against plaintiff and against defendants Parker and Stegmann for their costs and disbursements herein.

Dated at Portland, Oregon, this 25th day of June, 1953.

/s/ GUS J. SOLOMON,  
District Judge.

[Endorsed]: Filed June 25, 1953.

In the District Court of the United States  
for the District of Oregon

Civil No. 6242

TITLE AND TRUST COMPANY, a Corporation,  
Plaintiff and Third-Party Plaintiff,

vs.

CHET L. PARKER, LOIS M. PARKER, and  
WALTER STEGMANN,

Defendants,

vs.

PAUL WINANS, ETHEL WINANS, ROSS M.  
WINANS, AUDUBON WINANS, and LIN-  
NAEUS WINANS,

Third-Party Defendants.

### JUDGMENT ORDER

The above cause came on regularly for trial on January 19, 1953, before the undersigned judge of the above-entitled court. Plaintiff appeared by James K. Buell and Manley B. Strayer of its attorneys. Defendants Chet L. Parker and Lois M. Parker appeared by Nicholas Jaureguy of their attorneys. Defendant Walter Stegmann appeared by John D. Ryan of his attorneys. Third-party defendants, Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans, appeared by Dennis Lindsay and Gunther Krause

of their attorneys. All parties waived trial of any of the fact issues by a jury and agreed to try all issues of fact and law arising out of the matters set forth in the pleadings before the court without a jury. The parties thereupon introduced testimony and evidence in support of their respective cases and claims and thereafter argued their contentions of fact and law to the court; and the court having thereafter taken the case under advisement and having fully and carefully considered all the issues of fact and law arising herein; and

It Appearing to the Court, and the Court having found in favor of the plaintiff and against the defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann, on the causes of action set forth in plaintiff's amended complaint and the causes of action set forth in the counterclaims of said defendants; and having found in favor of the third-party defendants and against the plaintiff on the causes of action set forth in the third-party complaint; and having found in favor of the third-party defendants and against the defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann on the causes of action set forth in the cross-claim of the third-party defendants and on the cross-claims of said defendants against the third-party defendants; and the third-party defendants having abandoned their counterclaim against plaintiff in open court; and the court having heretofore made and entered its Findings of Fact and Conclusions of Law,

Now Therefore, pursuant to said Findings of

Fact and Conclusions of Law and in accordance therewith,

It Is Hereby Considered, Ordered, Adjudged and Decreed as follows:

1. That that certain policy of Purchaser's Title Insurance, HR No. 12987, issued and delivered by plaintiff to defendant, Chet L. Parker, in the face amount of \$125,000.00 insuring a fee simple title to the property described therein in Ethel Winans as of 8:00 o'clock a.m., August 30, 1951, and that certain policy of Owner's Title Insurance, HR No. 12987, issued and delivered by plaintiff to defendant, Chet L. Parker, in the face amount of \$125,000.00 insuring a fee simple title to the property described therein in Chet L. Parker as of 8:00 o'clock a.m., September 12, 1951, be and the same hereby are cancelled and set aside and held for naught upon payment by plaintiff into the registry of this court of the sum of \$430.00 together with interest on \$25.00 thereof at six per cent per annum from August 16, 1951, and on \$405.00 thereof from August 30, 1951, until the date of such payment into the registry of this court, and the clerk of this court is hereby directed to pay and said sum of \$430.00 together with said interest thereon over to the defendant, Chet L. Parker, on account of the premium paid for said policies.

2. That the counterclaim of defendants, Chet L. Parker and Lois M. Parker, based upon said policies of title insurance, be and it hereby is dismissed with prejudice.

3. That the counterclaim of defendant, Walter Stegmann, against plaintiff be and it hereby is dismissed with prejudice.

4. That the third-party complaint of plaintiff against third-party defendants and the counterclaim of third-party defendants against plaintiff be and they hereby are dismissed with prejudice.

5. That the counterclaims of defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann, against third-party defendants be and they hereby are dismissed with prejudice.

6. That the third-party defendants have judgment for and recover of and from defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann the sum of \$9,000.00, and that said third-party defendants have judgment for and recover of and from said defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann, their costs and disbursements herein incurred, taxed in the sum of \$.....

7. That plaintiff have judgment for and recover of and from defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann, its costs and disbursements herein incurred, taxed at \$.....

8. That third-party defendants have judgment for and recover of and from the plaintiff their costs and disbursements herein incurred, taxed in the sum of \$.....

9. That execution issue hereon.

Dated at Portland, Oregon, this 25th day of June, 1953.

/s/ GUS J. SOLOMON,  
Judge.

Service of copy acknowledged.

[Endorsed]: Filed June 25, 1953.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Chet L. Parker and Lois M. Parker, defendants above-named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from each and every part and from the whole of the final judgment entered in this action on June 25, 1953, it being the intention of said defendants to appeal from each order and judgment included in the Judgment Order entered on said date.

CAKE, JAUREGUY & HARDY,

By /s/ NICHOLAS JAUREGUY,  
Attorneys for Defendants Chet L. Parker and Lois  
M. Parker.

Service of copy acknowledged.

[Endorsed]: Filed July 23, 1953.

[Title of District Court and Cause.]

## STATEMENT OF POINTS ON APPEAL

The following is the statement of Chet L. Parker and Lois M. Parker of the points on which they intend to rely on appeal. The court erred in:

1. Entering Findings of Fact No. XV; first two sentences of XVI; XVII; last sentence of XVIII; last sentence of XXI; XXII; second and fourth sentences of XXV; third and fourth sentences, lines 24 to 26 of eighth sentence, of XXVI; XXVIII; XXIX; XXX except lines 16 to 18; first four lines and last sentence of XXXIII; second sentence of XXXIV; XXXV; XXXVI; XXXVII; XXXVIII; XXXIX; portions of XLI; XLII except first paragraph; XLIII except first sentence; XLV; XLVI; XLVII; XLVIII.

2. Entering Conclusions of Law No. II, III, IV, V, VI, VII, VIII, IX, X.

3. Entering the final judgment, particularly subparagraphs 1, 2, 5, 6 and 7 thereof.

4. Refusing to enter a judgment in favor of defendants Parker as prayed for in their counter-claim and cross-claim.

5. In numerous rulings at the trial of the cause in the admission of evidence on behalf of plaintiff and third-party defendants, and in the exclusion of evidence offered by these defendants. (Upon request a more detailed designation of these errors

will be furnished after the reporter completes the transcript of testimony.)

CAKE, JAUREGUY & HARDY,

By /s/ NICHOLAS JAUREGUY,  
Attorneys for Defendants Chet L. Parker and Lois  
M. Parker.

Service of copy acknowledged.

[Endorsed]: Filed July 23, 1953.

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[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Walter Stegmann, the defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from each and every part and from the whole of the final judgment entered against him in this action on June 25, 1953, it being the intention of said defendant to appeal from each order and judgment included in the Judgment Order entered on said date.

RYAN & PELAY,

By /s/ JOHN D. RYAN,  
Attorneys for Defendant  
Walter Stegmann.

Service of copy acknowledged.

[Endorsed]: Filed July 24, 1953.

United States District Court,  
District of Oregon

Civil No. 6242

TITLE AND TRUST COMPANY, a Corporation,  
Plaintiff and Third-Party Plaintiff,

vs.

CHET L. PARKER, LOIS M. PARKER, and  
WALTER STEGMANN,  
Defendants,

vs.

PAUL WINANS, ETHEL WINANS, ROSS M.  
WINANS, AUDUBON WINANS and LIN-  
NAEUS WINANS,

Third-Party Defendants.

TRANSCRIPT OF PROCEEDINGS

Tuesday, January 20, 1953

Before: Honorable Gus J. Solomon,  
District Judge.

Appearances:

JAMES K. BUELL and  
MANLEY B. STRAYER,  
Of Attorneys for Plaintiff and Third-  
Party Plaintiff.

NICHOLAS JAUREGUY,  
Of Attorneys for Chet L. Parker and  
Lois M. Parker, Defendants.

JOHN D. RYAN,  
Attorney for Walter Stegmann, Defendant.

GUNTHER F. KRAUSE and  
DENNIS J. LINDSAY,

Of Attorneys for Paul Winans, Ethel  
Winans, Ross M. Winans, Audubon  
Winans and Linnaeus Winans, Third-  
Party Defendants.

\* \* \*

EDWARD MILLER

was thereupon produced as a witness in behalf of  
the plaintiff and third-party plaintiff, and, having  
been first duly sworn, was examined and testified as  
follows:

Direct Examination

By Mr. Buell:

Q. Mr. Miller, where do you live?

A. In Hood River.

Q. What is your occupation?

A. I am manager of the branch office of the Title  
and Trust Company in Hood River.

Q. How long have you been so employed?

A. Since 1946.

Q. When did the Title and Trust Company open  
its branch office in Hood River?

A. In June of 1946.

Q. Were you sent to the office when it was  
opened? A. Shortly after it was opened.

Q. Was there already an existing title office or  
plant at Hood River when you arrived there?

A. Yes, there was. The Title and Trust Com-  
pany bought out the Hood River Abstract and In-  
vestment Company.

(Testimony of Edward Miller.)

Q. Did the Title and Trust Company use the lot books previously kept by the Hood River Abstract and Investment Company, or did it prepare all new title records for the county? [3\*]

A. Used the ones already in existence.

Q. Will the Bailiff please hand the witness what has been marked for identification as Plaintiff's Exhibits 2, 3, 4 and 6.

(Photostatic copy of Title and Trust Company document HR No. 12987 was thereupon marked Plaintiff's Exhibit 2 for identification.)

(Photostat of closed file HR No. 12987, Title and Trust Company, was thereupon marked Plaintiff's Exhibit 3 for identification.)

(Documents, Mrs. Sinclair's file HRA Base No. 109, was thereupon marked Plaintiff's Exhibit 4 for identification.)

(Photostat, Land Abstract Index, Township No. 1, Range No. 8, Section 16, was thereupon marked Plaintiff's Exhibit 6 for identification.)

Mr. Buell: If it please the Court, it might or probably could save considerable time if Counsel had no objection, we have additional photostatic copies of documents just handed the witness, and it might make it easier for the Court to follow the testimony pertaining to the records if the Court could look at them.

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Edward Miller.)

The Court: Let me take a look at them. [4]

Mr. Buell: These are Exhibits 2, 3 and 6.

Mr. Jaureguy: If they have any more, it would make it easier for counsel.

Q. (By Mr. Buell): Now, Mr. Miller, you will find that the exhibit numbers we are referring to are stamped, I believe, on the back of the photo-static copies, and there is also a sticker on the front with the number. A. Yes.

Q. Now, referring first to Exhibit No. 2, would you advise the Court what that document is?

A. It is the billing record of this particular transaction.

Q. Involving the policies of insurance which you issued to Chet Parker? A. That is correct.

The Court: I think we had better stop now before we get into it any further.

(Thereupon a short recess was taken.)

### EDWARD MILLER

recalled, testified as follows:

#### Direct Examination

(Continued)

By Mr. Buell:

Q. We were referring to Exhibit 2, Mr. Miller. What is the number in the upper right-hand corner, HR No. 12987?

A. That is the order number for the, both for the placing of the original order and for the title insurance policy.

(Testimony of Edward Miller.)

Q. What business or what records or what files of your [5] office are given order numbers such as that?

A. All of our business has an order number.

Q. Is that the number under which all data pertaining to the particular order is filed in your Hood River office?

A. That is correct. We keep a file of each order separately by number.

Q. Those numbers run successively?

A. Yes, they do.

Mr. Buell: He is referring to the one-page document, your Honor.

The Court: Is this the order, this one (indicating document)?

Mr. Buell: Yes, the ledger sheet. He identified it as the billing record, I believe he described it as.

The Court: I did not hear what you said.

Mr. Buell: I believe Mr. Miller described it as a billing record.

The Court: Yes, I have it here.

Q. (By Mr. Buell): On August 13 of 1951, Mr. Miller, how many orders did your Hood River office receive and write up?

A. I don't remember the exact number, but there were four or five, maybe six of them. They usually come in in the morning. That was a Monday morning. This particular one was the first one for that day.

The Court: What is the significance of this testi-

(Testimony of Edward Miller.)

mony, [6] how many orders came in? What is the relevancy?

Mr. Buell: He stated it was the first order written up for that day, your Honor.

The Court: I would like to ask a question. Is it your contention that people who order title policies or title searches are required to divulge all the information they have concerning the title?

Mr. Buell: It is our contention that they are under obligation to disclose any defects or a claim of defects they had notice of.

The Court: Is there a policy requirement of that?

Mr. Buell: Not prior to the issuance of the policy. There is no written provision in the contract, no, your Honor.

The Court: Does the policy itself say that this policy is issued on condition that there has been a complete disclosure of all the facts pertaining to the title?

Mr. Buell: No, there is no written condition such as that.

The Court: Do you have any authority to support your contention?

Mr. Buell: Yes, we do, your Honor.

The Court: That it is incumbent on a person who seeks a title policy to divulge all information affecting the validity of the title? [7]

Mr. Buell: To disclose any facts of which the applicant has knowledge as to any defect or possibility of defects as to the defect of the title.

The Court: Even to the company that is on the

(Testimony of Edward Miller.)

reissue of a policy? This was a reissue of a policy, was it not?

Mr. Buell: Not a reissue of one of the policies, your Honor, but, in any event, the duty is there to disclose any facts, if known or of which they had knowledge, that are material to the rest.

The Court: Well, is the customer supposed to know what the title company knows or doesn't know? This is not a case of forgery of a title. This is a case of where the record itself, if a proper examination of the title were made, the company would have caught it.

Mr. Buell: Well, this goes to the—if he did not know about it, then he couldn't disclose it, but if it is a fact which he does know then he has a duty to disclose it.

The Court: How does he know that the company does not know it when it can be determined from the records? If there is a mortgage on the property, is it incumbent upon me to notify the company that there is a mortgage even though the mortgage is a matter of record?

Mr. Buell: Well, in this particular case, your Honor, the evidence subsequently to be brought in here will disclose that not only did they know of the defect but that [8] they also had notice of the fact that the title had been previously insured.

The Court: Well, that is all the more reason why it should not be incumbent upon him to disclose.

Mr. Strayer: Pardon me, your Honor.

(Testimony of Edward Miller.)

The Court: Go ahead. I do not understand the theory of this.

Mr. Strayer: I think that your Honor and Mr. Buell have a basic misunderstanding. In the first place, this was not a reissue in the sense that your Honor is thinking about. There was an outstanding policy only on Lot 1 as to which the title was okeh. Now, Mr. Parker was getting a policy, title policy of insurance on both of those, and to the extent that he was getting one on the good title land it was a reissue, but it was a new title on the balance. Now as to the knowledge of the defect, there was nothing of record. The testimony will show that there was nothing of record in Hood River County which disclosed any defects. It would not have been disclosed by an examination of the records of the former company that the Title and Trust Company had taken over or of any of the public records in Hood River County, and it is our contention that Mr. Parker, having the actual knowledge of that defect in title, was under a duty to disclose.

The Court: Well, I think it might be also incumbent upon you to show that Mr. Parker knew that those facts were [9] not available to the title company.

Mr. Strayer: Well, we think we will have evidence of that, your Honor. I do not think that that is necessary, but we think the evidence will indicate that.

The Court: All right; go ahead. I do not want to prevent you from putting on your whole case, but

(Testimony of Edward Miller.)

last night I began to worry about that, wanting to know if there was a condition in the policy which required full disclosure or whether there was any law. I would like to see your authorities, incidentally, so that during the noon hour I can take a look at them.

Mr. Strayer: I have not done a lot of work on the law. Perhaps I should not speak on it, but my understanding is this, your Honor, that when a person applies for a policy of title insurance that there is a fiduciary relationship between the insurer and the insured; that the applicant has a duty to disclose the fact that what he is asking to be insured actually is non-existent, and that is what was done in this case.

The Court: Tell me that again.

Mr. Strayer: Where an applicant applies for a policy of title insurance the duty rests upon him arising out of a fiduciary relationship there to reveal defects of which he has actual knowledge and certainly as to which he has reason to believe—— [10]

The Court: Which are not a matter of record, for instance?

Mr. Strayer: I beg your pardon?

The Court: For instance, I used forgery as an example. I think that is a clear example where it is incumbent upon the purchaser to speak up if he knows that there is a forgery because the company would have no way of determining that. Likewise, if there is somebody in a house that nobody knows about or the company does not know about who

(Testimony of Edward Miller.)

might have some rights, I think on that proposition it might be incumbent upon them to disclose, but, in that event, the company would not be liable anyway on their policy because they only are liable for those matters which are matters of record, isn't that right?

Mr. Jaureguy: No.

The Court: What is the law on that as to company liability for matters which are not matters of record?

Mr. Jaureguy: That is correct except as provided in the policy. Now the last illustration your Honor covered, there was a provision in the policy that excepts claims of persons in possession, you see, but otherwise that they are liable whether it is a matter of record or not. Of course, in this case it was a matter of record although not, as we understand it and have admitted, in the public deed records of Hood River County, but it was a matter of record in at [11] least three places we know of in the State of Oregon. We know from experience we can pick up a telephone and call the State Land Board and learn over the telephone whether these sixteen 36's are, have actually passed to the State of Oregon.

Mr. Strayer: I believe it so happened in this case that the State Land Board had no records. They had been destroyed in the fire in Salem, but the information should be available in Washington, D. C., but there was no information of record under the recording in Hood River County as to the defect.

(Testimony of Edward Miller.)

Mr. Jaureguy: I will have to correct one statement that you made, that on the former policy, former claim that was true, but in connection with the former claim the State Land Board obtained the information so that it was of record in Salem. It was of record in Roseburg, and it was of record in Swan Island.

Mr. Strayer: I think it was of record in Swan Island. I am not familiar with the Salem end. That might very well be true, and Mr. Jaureguy has lived with the case more than I have.

The Court: I am not so very much concerned about where it was of record as long as it was of record some place and the company could have discovered it, but I am still concerned about the obligations of a purchaser to disclose matters of [12] record which are available to the company, and I would like very much to see the authorities upon which you rely.

Mr. Strayer: I am sure Mr. Buell can furnish those to your Honor during the noon hour. I would like to get clear in my mind though, do I understand that your Honor has the view at the present time that regardless of intent to deceive, and intent to defraud, nevertheless a person can go to a title company and by concealing what he knows that what he is asking to insure is in fact non-existent, he can devise a scheme to defraud the title company and collect on that scheme?

The Court: Well, you have got too many "ifs" in that.

(Testimony of Edward Miller.)

Mr. Jaureguy: I will say if your Honor were of that view I might not disagree with your Honor.

The Court: I understood from Mr. Buell yesterday that it was the contention of the plaintiff that in the absence of fraud plaintiff has a cause of action?

Mr. Strayer: We do contend that, your Honor, there is a distinction between specific intent to defraud and the failure to disclose a fact known to the applicant for insurance at the time he applies for it.

The Court: You say you do not rely on the policy to be issued in this suit?

Mr. Strayer: Not with regard to the fraud. We rely on two specific policy conditions. However, that will be [13] developed during the case as the evidence comes in. One is a specific written duty on the part of an owner of a policy of insurance to give written notice to the company immediately upon receipt of notice of any defect or claimed defect in the title. We claim that that was breached between the time the purchaser's policy was issued and the time the deed was placed of record. Second, there is the exclusion in the policy that Mr. Jaureguy pointed out, that the policy did not insure against rights of persons in possession or claiming to be in possession.

It is our position in this case that the United States, through the resident ranger at Parkdale, was in possession of the property, and it was posted and within the timber reserve.

(Testimony of Edward Miller.)

The Court: That is not the kind of possession that the policies refer to. Proceed.

Q. (By Mr. Buell): Mr. Miller, you testified that this Order 12987 was the first one written on August 13th. Now, referring to Exhibit 3, what is that exhibit?

A. That is a photostatic copy of the file kept in this particular matter.

Q. Your file?

A. Yes, Title and Trust Company file.

The Court: What exhibit is that? [14]

The Witness: Exhibit 3.

The Court: Is that 2?

The Witness: 3.

Q. (By Mr. Buell): Is there any connection, Mr. Miller, between the time that the printed form when blank, or blank at the top of the first page of Exhibit 3, is filled out and the printed matter appearing on Exhibit 2, which is the billing record?

A. Any difference in time?

Q. I say, is there any connection in time?

A. Well, it is done at the same time, but the typing and the billing is a carbon copy of the first sheet on file.

Q. Now, referring to that file, Exhibit 3, would you please describe or advise the Court what the notation, "Report delivered on 8-15-51 to Home Office, Attention Mr. Muschalic," in whose handwriting is that notation?

A. I think that is my handwriting, and that is the date on which we mailed the report to our home

(Testimony of Edward Miller.)

office in Portland for the attention of Mr. Muschalic.

Mr. Lindsay: Excuse me. What page are you referring to?

The Witness: That is the front page.

Mr. Buell: Page 1 of Exhibit 3.

Q. Mr. Miller, referring to the entries in the boxed space in the printed form under the printed words, "Do not write here," what are those figures, and what do they represent? [15]

A. Those figures represent the premium charged for the policy as it will be written. The first figure of \$45.00 is a reissue rate for the policy in the amount of \$8,000. Following that is an increase and, crossed out, the figures \$185.00. That is the increase from \$8,000 to \$50,000 with a total premium of \$230 as the order was originally placed.

Q. Then what is the figure 385 substituted in lieu of 185 which is scratched out?

A. When the order was increased from \$50,000 to \$125,000, the increase then was \$385, which brings the total up to \$430.

Q. When the preliminary report was mailed to the home office, was a billing sent along with it?

A. Yes, that is customary, and the billing was sent along under the original figures with a total of \$230.

Q. That was based upon what amount of policy?

A. \$50,000.

Q. Now, would you explain to the Court what this reissue premium is?

A. It is a little lower rate is about all it amounts

(Testimony of Edward Miller.)

to, and we recognize that whether the prior policy is our own or the policy of another company.

Q. In this particular case whose policy was the reissue credit given upon?

A. Pacific Abstract and Title. [16]

The Court: Did you know about that at the time?

The Witness: Yes, sir.

The Court: The policy was written through the Hood River Abstract Company, though?

The Witness: That is correct.

The Court: Actually, they made the search, did they not, Hood River Abstract Company, not Pacific?

The Witness: Yes, that would be correct.

The Court: Pacific only got 20 per cent of the premium for the writing of the policy, that is all; isn't that right?

The Witness: Well, I don't know about that.

The Court: All right. Proceed.

Q. (By Mr. Buell): Did you at the time the preliminary report was sent out know that there had been a loss paid under the prior Pacific policy?

A. No, I did not.

Q. Referring to Page numbered 11½ in the file, Exhibit 3, can you identify what that is?

A. That is a notation left by Mr. Chet Parker when he placed the order giving the description, the name of the owner, his name and address and telephone number.

Q. What is the Page 2, the following page?

(Testimony of Edward Miller.)

A. It is what we call our chain sheet.

Q. Whom was that prepared by?

A. By Miss Vose of our office. [17]

Q. What is the Page 3?

A. That is a lien check, the names of the people involved. We make a check on what we call the general index against judgments and general liens.

Q. Whom is that search made by?

A. By the chain-maker ordinarily, which would be Miss Vose.

Q. What is Page 4?

A. Those are my notations on a suit brought to foreclose a mortgage.

Q. What is Page 5?

A. Those are my instructions to the stenographer in typing the report.

Q. Then down in the lower left-hand corner there appears in print or mimeographed words, "Chain held by," and then those initials, and "Report held by," and initials. What does that represent?

A. The typist and one other person compares the report against the instructions, and that shows who held the chain order instructions and who held the report.

Q. Whose initials are "E.W."?

A. Elaine Walston.

Q. What is "H.B."?

A. That is Helen Bisbee.

Q. Who are they?

A. They were employed in our office at this

(Testimony of Edward Miller.)

particular time. [18] Helen Bisbee was a part-time girl.

Q. Then referring to page 6, what is that?

A. That is a photostatic copy of the report itself.

Q. The preliminary report to Mr. Parker?

A. That is correct. That is the one we sent to Portland.

Q. Below the description of the property there is in writing "Saving and excepting therefrom, etc." Can you identify that handwriting?

A. That is my handwriting. The description covering the transaction was changed. Certain property was reserved so we modified our description to conform to the deed in question.

Q. When was that notation made on your file and copy of the preliminary report?

A. That would have been prior to the issuance of the insurance policy. I don't remember the——

Q. How about relative to the time the deed had been placed of record?

A. I might have made it on the day the deed was recorded or the day following.

Q. Referring to the sheet which appears to be numbered 7 or is entitled "Inter-Office Memo," would you explain what that page is?

A. That is a notation we sent along with the report when we mailed it to Mr. Muschalie at the Portland office and his [19] response written at the bottom of that.

Q. What is page 8?

(Testimony of Edward Miller.)

A. Those are stenographer's instructions for writing a purchaser's policy.

Q. Were those instructions made out by yourself?

A. No, they were made out by Jerry Gray who was a relief man in Hood River at the time I was on my vacation.

Q. What is page 9?

A. Those are my instructions on the insurance policy.

Q. What is the document attached to the back page and apparently not numbered?

A. That is a photostatic copy of the purchaser's policy of title insurance.

Q. Is that a photostatic copy of the original policy of purchaser's title insurance?

A. That is right.

Q. When was that returned to your possession?

A. September 12, as I recall it.

Q. You mentioned your vacation there. When did you commence your vacation that summer, Mr. Miller?

A. Well, it was on August 20th, which would have——

Q. When did you return?

A. The day after Labor Day.

Mr. Lindsay: What date was that? Excuse me.

The Witness: That would have been September 4th, if I [20] remember right.

Q. (By Mr. Buell): Mr. Miller, referring to Exhibit 4, would you identify that, please?

(Testimony of Edward Miller.)

A. That is the file kept by the Hood River Abstract and Investment Company on the original policy issued in the amount of \$8,000.

Q. What is the file number?

A. We have it as Base No. 109.

Mr. Buell: We did not have copies of that. I am sorry, your Honor.

The Court: That is all right. Has this man just been called for the purpose of identifying documents so that they may be admitted in evidence? Is that the purpose?

A. It was primarily, your Honor, so that the record will show what these exhibits are and what the various attachments to them are and when and how they were made, is the only way I knew of getting it into the record. I hate to take the time, but I did not see any other way.

The Court: There is no controversy about anything about which he has testified, but go ahead.

Q. (By Mr. Buell): Mr. Miller, is that Base File 109, Exhibit 4, has that been in your possession since you have been—or custody or control since you have been manager of the Hood River office?

A. Yes, it has. [21]

Q. Have there been any changes or alterations made to it since that time?

A. None that I know of.

The Court: Are you objecting? Is anybody objecting to the admissibility of that document?

Mr. Jaureguy: No.

Mr. Krause: No.

(Testimony of Edward Miller.)

Mr. Ryan: No.

The Court: It may be admitted.

(Document previously marked Plaintiff's Exhibit 4 for Identification was thereupon received in evidence.)

Mr. Buell: Mr. Jaureguy, I wonder if I could have Exhibit 74?

(Thereupon there was a discussion between Court and counsel off the record.)

The Court: Is there any objection to any of the documents about which the witness has been speaking?

Mr. Jaureguy: No objections from our part.

The Court: All of them may be admitted?

Mr. Buell: 2, 3 and 4?

The Court: All of them.

(Thereupon the exhibits previously marked Plaintiff's Exhibits 2, 3 and 4 for Identification were received in evidence.) [22]

Q. (By Mr. Buell): Referring to Exhibit 6, Mr. Miller——

The Court: 6, that is the tract record.

Mr. Buell: Could I get into the record what that is, your Honor?

The Court: All right, go ahead.

Q. (By Mr. Buell): What is Exhibit 6?

The Witness: It is a photostatic copy of the tract book's notation in this particular section.

The Court: It may be admitted.

(Testimony of Edward Miller.)

(Thereupon the exhibit previously marked for identification as Plaintiff's Exhibit 6 was received in evidence.)

The Court: I think we might save a great deal of time, Mr. Buell, if you would explain what the documents are instead of having the witness say that Exhibit 6 is a tract record. Why don't you get up and say, "I want to offer the following documents," and explain them and get them into evidence?

Mr. Buell: All right, your Honor.

Q. Mr. Miller, did you have any contact with Mr. Chet Parker on the day that he placed the order which you referred to?

A. I don't remember any conversation had.

Q. Did you receive any inquiry regarding the, when the report on this property would be ready between the time that the order was received and the time the report was sent to the Portland office?

A. Yes, there was an inquiry made at the office on August [23] 15th in the morning.

Q. Do you know who the person was that made the inquiry about the report? A. No, I do not.

Q. Could you describe him?

A. Well, he was dressed in woods clothes. That is, woods clothes, clothing for rough wear. He had boots on. He was tall and slim. He had dark hair and combed it straight back, as I remember.

Q. What kind of an inquiry was made?

A. He wanted to know when the report was ready, would be ready.

(Testimony of Edward Miller.)

Q. Did he specify what report?

A. Yes, the report we were making for Mr. Parker.

The Court: Is that man in the courtroom now?

The Witness: Well, there is a man who resembles him, but I couldn't—

The Court: Well, who is he?

The Witness: It is the man in the dark blue suit (indicating).

The Court: That is Mr. Stegmann. You think it is Mr. Stegmann, do you?

Mr. Buell: Yes, we do.

The Court: Go ahead.

Q. (By Mr. Buell): Was the report, in fact, ready at that [24] time?

A. No, it was not ready at that time. I informed him that we would send to Portland and since Mr. Parker was resident in Vancouver, Washington, that we would send the report to Portland, and he could pick it up there.

Q. Following the sending of the preliminary report to Portland, was there any other activity that came to your knowledge regarding this order between August 15th and the time you left on your vacation?

A. Well, we received a notation back from Mr. Muschalie that the amount of the policy was subject to a timber cruise.

Q. Was there anything else besides that?

A. Nothing that I recall.

(Testimony of Edward Miller.)

Q. Then when you returned from your vacation on September 4th did you find that there had been any change as to the status of the order?

A. The purchaser's policy had been typed. It was ready for delivery. The amount had been increased from \$50,000 to \$125,000.

Q. Had Mr. Parker furnished any additional documents in connection with the order?

A. Well, I found in the file a, what appeared to be an assignment of an option.

Q. When is the next time that you saw Mr. or Mrs. Parker?

Mr. Jaureguy: When next time? [25]

Mr. Buell: Well, following his return from his vacation.

The Court: I do not think he has testified that he ever met Mr. Parker or Mrs. Parker.

Mr. Buell: Why, I will straighten that out your Honor.

Q. Did you see either Mr. or Mrs. Parker on the day the order was placed? A. Yes, I did.

Q. Did you meet them?

A. I don't recall whether I met them that particular day or subsequent thereto, but I did meet them, and I knew who they were.

Q. Both Mr. and Mrs. Parker or——

A. Both of them.

Q. Then following your return from your vacation did you have occasion to talk with Mr. and Mrs. Parker at any time before the deed was completed or the deed was executed and recorded?

(Testimony of Edward Miller.)

A. Mr. Parker made inquiry as to whether or not we would convert the purchaser's policy to an insurance policy in the same amount after the transaction was closed, whether or not there would be any additional premium in that respect.

Q. Was any agreement reached as to whether or not you would do that?

A. I agreed to do that without an extra charge because the matter was current. It was one transaction after all. [26]

Q. Then when and how did you first learn of the claim of ownership of the United States in this property?

A. The deed was recorded on September 11th. Mr. Parker wanted his policy as soon as possible so I was over at the courthouse the next morning checking on this particular detail. I was contacted there by Mr. Bert Holtby, who is a forest ranger at Parkdale, as to whether or not we had written title insurance on this particular tract and did I know that the Federal Government claimed ownership. That was the first indication I had personal knowledge of.

Q. Had you issued the insurance policy at that time?      A. We had not.

Q. What did you next do with reference to the issuance of the insurance policy?

A. As I remember it, Mr. Parker was in the office late that morning, and I explained to him the fact that the Federal Government was claiming ownership to a portion of the property. I also called

(Testimony of Edward Miller.)

our home office and talked with Mr. Dwyer as to whether or not our position would be any different in issuance of the owner's policy in lieu of the purchaser's policy.

Q. Did you receive authority to issue the owner's?      A. Yes, I did.

Q. When was that owner's policy delivered to the Parkers, as you recall? [27]

A. It was either that afternoon or the day following. I do not recall too specifically.

Q. Did Mr. Parker tell you anything about the property or what he had paid for it or how he had acquired it at the time that you notified him of the Government's claim of ownership?

A. I don't recall any statement from him.

Q. Did he at any time tell you what he had paid for the property?

A. Yes, he stated that he had paid one hundred thousand to the Winans and twenty-five thousand to Walter Stegmann.

Q. Did he tell you or say anything to you about Mr. Stegmann's part in the transaction, if any?

A. Well, he made some statement as to the closing of the transaction being required by Mr. Stegmann under the option.

The Court: How long is this testimony going to be?

Mr. Buell: That is all, your Honor.

The Court: Let us take a five-minute recess.

(Short recess taken.)

(Testimony of Edward Miller.)

### Cross-Examination

By Mr. Jaureguy:

Q. I don't quite understand when you say that Mr. Parker said that. Are you attempting to quote his very words that he stated, or are you just giving what your impression was, [28] a summary of it?

A. It would be my summary of it.

Q. Would you say that what he explained to you would have been that Stegmann was doing the surveying and that the closing might be delayed on account of getting an accurate description of certain property that was being reserved?

A. I don't know. The discussion came up, I believe, on Wednesday, September 12th.

Q. Wednesday, September 12th, was after the deed was recorded?      A. That is correct.

Q. Well, what happened? What else did he talk about that day? Do you know how he happened to be there talking to you on the 12th of September?

A. He was there to secure an insurance policy.

Q. On the 12th of September?

A. That's right.

Q. Well, now, will you repeat—the conversation you had on the 12th was a rather short conversation, was it not?

A. Well, it was my explanation to him of the claim of the Federal Government and remarks made by him.

(Testimony of Edward Miller.)

Q. Well, now, just try and reconstruct it for us, will you? What was said? I don't understand how the question of the closing of the transaction would have any relevancy in the matter that you were discussing at the time. Can you explain [29] how the subject happened to be brought in? That is, the occasion to which you refer was the occasion when he came in order to get his owner's policy; that is correct, isn't it?

A. That is correct.

Q. I do not understand how in connection with his picking up the owner's policy or in connection with your explaining the information you had received of the claim of the Government, how the matter of the closing of the transaction was in any way involved.

A. Well, we had in the file this assignment of option. I cannot remember all of the conversation had, but Mr. Holtby went quite into detail about the transaction at the courthouse with me. The only way I can figure it out now is that I probably asked him who Stegmann was. So far as I knew, he was not in the transaction at all.

Q. The only way you knew him to be in the transaction is that he at one time had an option, and that option was assigned to Parker?

A. That's right.

Q. There was nothing that Parker told you at that time that in any way modified it or controverted it, was there?

A. No.

Q. But he said something about Stegmann having some duty or obligation under the option to do

(Testimony of Edward Miller.)

something in connection [30] with the closing, is that it?

A. Well, Mr. Holtby, as I remember it——

Q. That is the Government man?

A. That is the Government man, yes—had mentioned this Mr. Stegmann.

Q. You met Mr. Holtby, you say, at the courthouse?  
A. Yes.

Q. You had gone to the courthouse for the purpose of determining whether you could issue an owner's policy?  
A. That is correct.

Q. Was it while you were looking up the records that he showed up?  
A. That it right.

Q. Did he indicate to you that he showed up for the particular purpose of talking to you?

A. No.

Q. That is, he was there, and you knew him, and you got to talking with him?

A. That's right.

Q. During the course of your conversation you told him that you were issuing an owner's policy on this property; is that it?  
A. No, he asked me.

Q. Oh, he asked you. He asked you what property you were issuing it on? [31]

A. Either he was keeping tab of this particular transaction or he was making a current check on properties. They do that.

Q. About how often do they do that?

A. I don't know.

Q. Well, prior to this time how many times had he made a tab on these properties?

(Testimony of Edward Miller.)

A. Well, at least once a month.

Q. Does he come to your office when he does that?

A. No, he does not. He does it at the courthouse through the Assessor's office and the Clerk's office.

Q. Is the fact that he makes it once a month,—I mean, your opinion that he does it once a month,—is that the result of your seeing him there doing it?

A. I don't know; I didn't ask him why he was checking on that particular transaction.

Q. No, I understand that you said that he made a check of these transactions about once a month and that he did it at the courthouse, and I am asking you whether or not that is a result of your own observation or whether that is what somebody told you?

A. That is the result of my own observation.

Q. That is; and those observations had taken place before this date, September 11th, that you told about?

A. That's right. He does not necessarily do it in person, but he was there that particular day. [32]

Q. Prior to that time had you known that he made a check up there on the transactions on properties in and about the Mt. Hood Forest Reserve once a month or not?

A. No, I had not made any particular inquiry.

Q. Well, when did you learn that he or others from the Forest Service made checks at the courthouse approximately once a month about transactions of this kind?

A. I don't know as I could pin any date on that.

(Testimony of Edward Miller.)

So far as I can remember, it was that particular day.

Q. Well, you say that you knew as a result of your own observation that he made checks once a month? A. Well, approximately, yes.

Q. Yes, because you had seen him up there once a month before that time making these checks and investigations; is that true? A. That's right.

Q. Now, I notice on Page 2 of which I think is Exhibit 2—on Exhibit 3 there is the handwritten statement, "All Sections 16 & 32," I think the next word is "through," although I am not sure, "S/O set aside by act of Congress to S/O."

Mr. Krause: State of Oregon, that is.

Mr. Jaureguy: I understand, but when I quote I like to quote exactly. They assume it is the State of Oregon, and I am going to ask the witness when I come around to it.

Q. "—act of Congress to S/O as school lands. Nothing [33] further needed."

Do you know who wrote that?

The Witness: I wrote that.

Q. And "S/O" means State of Oregon?

A. That is right.

Q. Did you get your information from Portland, or is that the result of something you already knew? A. I got it from Portland.

Q. Just tell us about that, will you?

A. In making the examination I could find nothing of record so far as this particular section was

(Testimony of Edward Miller.)

concerned covering the Federal Government. I had temporarily forgotten about school lands. Some of the early instruments had been recorded in Multnomah County and then re-recorded in Hood River County so I called Portland primarily to see whether or not that particular instrument had not been recorded with Multnomah County but failed to be re-recorded in Hood River County, and that is when I got the information or the reminder about school lands.

Q. This was a telephone conversation?

A. Yes, it was.

Q. Do you know who answered it in Portland?

A. Well, it was Helen, Vose I think was the name.

Q. What was that name?

A. Vose, Helen Vose. [34]

Q. Did you get all the information on one telephone call, or did she say she would have to hang up and call you back later?

A. I am not certain about that. There could have been a call back.

Q. You know it to be a fact, do you not, that you cannot invariably rely on title to Sections 16 and 36 automatically going to the State of Oregon?

A. I do now, yes.

Q. You did not know that then? A. No.

Q. I take it that from your conversation at least the person in the home office did not know it either? Did you get that impression? A. That's right.

Q. Have you had occasion either before or since

(Testimony of Edward Miller.)

this telephone call to communicate with the State Land Board to obtain information regarding these Sections 16 and 36?           A. No, sir.

The Court: Isn't it 16 and 32, Mr. Jaureguy, not 16 and 36?

Mr. Jaureguy: This says 16 and 32.

The Court: But you have been saying 36.

Mr. Jaureguy: I have been saying 36——

The Witness: Well, 36, I think, is correct, [35]  
sir

Mr. Jaureguy: I have been keeping still here because I did not want to display my ignorance, but I think 36 is correct.

The Witness: I will agree with you.

The Court: It may very well be, but the notation here is 32.

Mr. Jaureguy: That is right, but the Township, the section involved in this case is 16 so that that is not of great importance.

Then S/O means State of Oregon as Mr. Krause told us?           A. Yes, sir.

Q. So that notwithstanding the fact that you had a prior—that there was a prior policy on this case, you examined it from the beginning?

A. Yes, I did. The chain of title is very brief so I went back of this particular deal.

Q. Now, in your office at that time do you know whether there was any correspondence relating to the settlement of a claim under the prior policy?

A. I wasn't able to find any.

Q. Well, have you learned otherwise, that there

(Testimony of Edward Miller.)

was some correspondence between the Portland office and the Hood River office when that claim was settled?

Mr. Strayer: With what company? [36]

Mr. Jaureguy: Yes, the home office of the Pacific. I should not even have said home office. I should have said that there was correspondence between the Portland office of the Pacific and the Hood River Abstract Company, Hood River, regarding that settlement.

The Witness: Yes, I have learned since then.

Q. (By Mr. Jaureguy): Have you searched the files in the Hood River office of the Title and Trust Company to find whether that correspondence was in that office at the time? A. I have.

Q. You have not been able to find it?

A. That's right.

Q. The title policy you knew was there—I mean, a copy of the title policy you knew was there?

A. That's right.

Q. Where was that? Was that in a special folder, or where was it?

A. Yes, it was in a special folder under the File No. 109.

Q. What else was in that folder?

A. There is a chain of title. There was an affidavit made by a prior County Assessor. I will take it apart if you want me to read it.

Q. Well, no, I do not care. I am not quite sure, but, anyway, there was nothing in the folder, none of that correspondence was in the folder? [37]

A. None of it.

(Testimony of Edward Miller.)

Q. I suppose in a well ordered and regulated office that correspondence would have been in that same office; would it not?

A. It should have been, yes.

Mr. Strayer: Just a moment. I will object to that question. This is a different company entirely he is questioning about, and I do not think it is material whether the other company was—conducted its housekeeping in a proper manner or not.

The Court: Well, I do not think we need any testimony on that, Mr. Jaureguy. Go ahead.

Q. (By Mr. Jaureguy): As I understand it, you were in charge of the Hood River office, were you not? A. That's right.

Q. Could you tell us how long you had been there?

A. It was in the fall of 1946 that I first went out.

Q. You went there shortly after it was purchased, then? A. That's right.

Q. Do you know what month it was purchased?

A. The office of the branch, as a branch, was opened in June, if I remember correctly, of 1946.

Q. You had been there, then, since the fall of 1946? A. Yes, sir.

Q. Had you, either through gossip or from any other source, [38] had during the five years after you got there, had you heard of this claim that the Pacific had paid on some of that property up there at Lost Lake? A. No, I had not.

Q. That had never come to your attention?

(Testimony of Edward Miller.)

A. No, sir.

Q. Do you know whether your company issued any abstracts or continuation of an abstract on this same property after the Title and Trust Company took it over?

A. No.

Q. Do you mean they didn't or you do not know?

A. They did not.

Q. Now, you have described somebody who, some man who asked you on October 15th—August 15th, rather, 1951, when the report would be ready?

A. Yes.

Q. You have told us about everything except his approximate age. Could you tell us what his approximate age was as you figured it?

A. Well, somewhere around 25 to 30.

Q. Do you think it would have been possible that he was under 20?

A. No, he looked a little older than that to me.

Mr. Jaureguy: That is all. Thank you.

The Court: Mr. Ryan? [39]

### Cross-Examination

By Mr. Ryan:

Q. Do you keep written memorandums regarding transactions relating to a policy of people calling you up and that sort of thing?

A. No, not every conversation. If they change a policy or something like that, we make a notation.

Q. Is your recollection of this man who came in there on the date you gave based upon just mem-

(Testimony of Edward Miller.)

ory, or did you have a written memorandum of that?

A. Memory only.

Q. Memory only. Did you inquire his name?

A. No, I did not. We met on the street, as a matter of fact.

Q. You met on the street?

A. We met on the street.

Q. How long a conversation took place?

A. It could not have been more than a minute.

Q. Did you ask him what his interest in it was, in the policy?

A. Well, he said he was a friend of Mr. Parker and was there, was in Hood River for Mr. Parker, and wanted to know if he could take it down to him, to Mr. Parker.

Mr. Jaureguy: Would you read that, please.

(Last answer read by the Reporter.) [40]

Q. (By Mr. Ryan): Can you recall any other details of his dress other than he was dressed as a woodsman?

A. Well, he had on logging boots, half boots. It was a warm day. He didn't have a coat on, if I recall.

Q. Had you seen the defendant Stegmann with the exception of that, at any time other than that, if you did see him at that time, until you saw him here today?

A. No, sir.

Mr. Ryan: That is all.

(Testimony of Edward Miller.)

Cross-Examination

By Mr. Lindsay:

Q. Mr. Miller, I would like to know about your contacts with Mr. Parker. How many times did you see him or talk to him?

A. He was in the office several times. I don't recall the number of times, but he came in when he placed the order. He was in other times.

Q. Let us take that first occasion he had placed the order which you fix as August 13th.

A. That is correct.

Q. Now, did you personally meet him at that time?

A. I don't recall whether I did or not, but I met him subsequent.

Q. What time of the day would you place [41] that?

A. It would have been in the morning on August 13th.

Q. Was Mrs. Parker with him?

A. I think she was the first day.

Q. What is your next contact with Mr. Parker?

A. Well, I don't know; I can't place any date on it.

Q. Can you definitely place a delivery of the owner's policy on Tuesday, September 12th, I guess that would have been——

A. That was on a Wednesday. No, I cannot definitely place the actual delivery of the policy

(Testimony of Edward Miller.)

that particular day, but it would not have been before that day. It could have been subsequent thereto.

Q. Well, the discussion you had with Mr. Parker concerning the claim of the Government to ownership, did that occur at the same time that you delivered the owner's policy or prior to that?

A. Prior to delivery because the policy had not been typed at the time we discussed that phase.

Q. So you would have had a discussion at the time that you told him about the Government's claim and then another one at the time you delivered it; is that correct?

A. Not necessarily, not another discussion. It was then just a matter of his coming for the policy.

Q. Now, at what point did you have this discussion with Mr. Parker concerning Mr. Stegmann?

A. I don't remember exactly, but as nearly as I can place [42] it, it was on the morning of the 12th, September 12th.

Q. Did Mr. Parker in his conversation, this particular conversation, tell you what part, if any, Stegmann had played in the purchase of this land?

A. Well, I don't remember whether he volunteered the information or whether or not I asked him the question. He did have this so-called assignment, and I had learned of this Mr. Stegmann making inquiries up at the Parkdale Ranger Station.

Q. Did he tell you Mr. Stegmann had been the person that closed the deal?

A. Yes, I think he did, that his option required that.

(Testimony of Edward Miller.)

Mr. Lindsay: That is all.

The Court: That is all. All right, Mr. Buell.

Mr. Buell: I have no further questions, your Honor.

Mr. Jaureguy: I would like to ask him another question.

Q. (By Mr. Jaureguy): Did he point out to you the language of the option that required it?

A. No, he did not.

Mr. Jaureguy: Now, I want one more question. I don't suppose you are planning on staying in the courtroom during the rest of the trial?

A. I could, or I could come down again.

Mr. Jaureguy: I would like to say that the Parkers think that they know who it was that asked that question on the 15th of August, and I wanted to know if counsel wanted advance [43] notice of when we would produce him.

Mr. Strayer: Would you care to give us the name?

Mr. Jaureguy: I do not know what good that would do.

Mr. Strayer: We might go out and look him over.

Mr. Jaureguy: He is not in town. We will have him here when we put on our case.

The Court: Well, is that a matter of great significance?

Mr. Jaureguy: I beg your pardon?

The Court: Is that a matter of great significance whether Stegmann saw him or somebody, some other young person?

(Testimony of Edward Miller.)

Mr. Jaureguy: No, I think it is just the psychology of them giving a lot of weight to it, and so I thought I had better look into it.

Mr. Ryan: We have the same feeling, your Honor, since we take the position that Mr. Stegmann was not there that day. The testimony is not too definite.

Mr. Jaureguy: Well, we will produce him anyway, and I will try to tell them in advance if they want to know.

The Court: You notify Mr. Buell when you are going to have him here, if you want the witness down there on that day.

Mr. Jaureguy: Of course, on further investigation they may find they are mistaken, but they are pretty well settled now that they know who [44] he was.

Mr. Strayer: That they know who he was?

Mr. Jaureguy: Mr. and Mrs. Parker are pretty well settled that Mr. and Mrs. Parker know who he was.

The Court: Well, there was somebody who contacted him, and he may be mistaken about the identity of the person.

Mr. Jaureguy: We are sure he is mistaken. We feel confident of that, almost certain that they know who he was. In fact, they are certain, but they might want to ask him so I will give you the name right now. He is Myron Parker, the son of Mr. and Mrs. Parker.

The Court: That doesn't mean anything to me.

(Testimony of Edward Miller.)

Mr. Jauregui: No, I know it, but they asked me for his name, and so I gave it.

The Court: Are there any further questions? You are excused. You are excused from further attendance at the trial.

(Witness excused.) [45]

### VANNE VOSE

was thereupon produced as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Buell:

Q. Miss Vose, you also live in Hood River, do you?      A. Yes, sir.

Q. Were you an employee of the Title and Trust Company in the Summer of 1951?

A. Yes, sir.

Q. Are you still?      A. Yes, sir.

Q. What are you employed as; what is your work?

A. I guess you would call it an office clerk.

Q. Do you remember meeting Mr. or Mrs. Chet Parker in connection with the issuance of title insurance involved in this case?      A. Yes, I do.

Q. When was it that you first met Mr. Parker?

A. The day he placed the order.

Q. Would you tell in your own words or tell us as closely as you can just exactly what was said by

(Testimony of Vanne Vose.)

Mr. Parker when he placed the order and what was discussed between you?

A. Well, about all I remember is he brought in this small [46] slip of paper and placed the order, and it had on that the amount and name of the owner. I was a little uncertain as to whether that section was in our county or not so I think we checked on the Metsker map to see if it was or not. Then I pulled out the file and found the prior policy, and that is about all I remember.

Q. Was there any notation on the prior policy concerning a loss paid by the Pacific Abstract and Title Company?

A. I didn't look for anything of that kind, but I don't think there was.

Q. Did you have any conversation with Mr. Parker as to the amount of title insurance to be placed on the property?

A. Yes, sir; I always ask for the value of the property if I can possibly get the value of the property, and I noticed there was quite a difference in the amount, and he said something that that was due to the increase in the value of the property the last few years.

Q. What were the amounts that were mentioned?

A. Well, he finally gave me the amount of \$50,000, and it was due to change if necessary.

Mr. Strayer: Due to what?

A. He thought it might be more or less. He didn't know for sure.

(Testimony of Vannie Vose.)

The Court: The \$50,000 might be more or less?

The Witness: Yes, he said he didn't want to set a [47] definite amount.

Q. (By Mr. Buell): Now, what arrangements were made, if any, as to when and where the report was to be picked up?

A. Mr. Parker said that he would call for it himself. I believe it was on a Friday.

Q. Do you have any recollection or know of any inquiry being made following the date the order was placed as to whether or not the report was ready?

A. I remember that Mr. Stegmann inquired about the report the day before the report was promised. He said he was going through town and that Mr. Parker asked for him to check.

Q. Where was Mr. Miller at that time?

A. He was at the courthouse at that time.

Q. Now, when you say Mr. Stegmann called, did he give you his name at the time?

A. No, he did not. I didn't know who he was at that time.

Q. Did you ever see him again?

A. I don't believe I ever did.

Q. When did you first see him in connection with this trial?      A. That was the first time.

Q. Was that before the proceedings had started yesterday, or after they had started?

A. Oh, you mean at the trial here? I recognized Mr. Stegmann the moment he walked in the back door here. [48]

(Testimony of Vanne Vose.)

Q. Now, following the placing of the order when was your next contact with Mr. Parker, if any?

A. Well, if I recall correctly, it must have been when I delivered the purchaser's policy to him. That would have been the day after Labor Day.

Q. What conversation did you have with Mr. Parker at that time?

A. Well, he informed me that he had tried to contact me at home, but I was gone, and that he had checked through the Police Department, I believe.

Mr. Jaureguy: Checked through what?

The Witness: The Police Department in Hood River.

Q. (By Mr. Buell): Did he state what he had tried to contact you in connection with?

A. I believe it was on a Saturday.

Q. What was it about that he was trying——

A. He was wanting me to get the policy for him, the purchaser's policy, from the office because the office was to be closed for three days.

Q. Did you have any other discussion with Mr. Parker on that day following Labor Day, or any other day?

A. Well, I can't recall for sure, but it seems to me that that may have been the time he inquired about changing to an owner's policy.

Q. What did you tell him about that? [49]

A. I told him that was unusual, a new form, but I would have to call Mr. Miller.

Q. Where was Mr. Miller at that time?

(Testimony of Vanne Vose.)

A. I believe he was at the courthouse at that time.

Q. Did you get in touch with Mr. Miller?

A. Yes, sir; I called Mr. Miller.

Q. What did he do?

A. I believe he told me at that time that yes, that could be arranged. I don't believe he came back to the office at that time. I can't remember.

Q. Am I correct that you are not able—that you were not definitely placing that conversation on September 4th?

A. No, sir; I wouldn't be sure.

Q. Well, could it have been prior, before September 4th, that that conversation took place?

A. It could have been, but I don't think it was.

Mr. Buell: You may examine.

### Cross-Examination

By Mr. Jaureguy:

Q. Now, I think you said at the time that Mr. Stegmann inquired about the report was the day before it was sent?

A. It was the day before we promised it, which I believe was on a Thursday if I am not mistaken. We promised it on Friday, and I think he called Thursday. I might—— [50]

Q. I mean to say Thursday.

A. I may be wrong.

Q. 1951, Thursday, was the 16th of August.

(Testimony of Vanne Vose.)

A. I may be wrong about the dates. I don't know.

Q. Anyway, it was the day before you promised it?

A. It was the day before we promised it, the day before Mr. Parker was to call for it.

Q. The policy—the report itself is dated August 15th. I wonder if you recall that?

A. No, I don't.

Q. Well then, did you know about somebody asking Mr. Miller when it could be obtained?

A. No, I wasn't—that wasn't while I was around.

Q. When did you first learn that somebody had also asked Mr. Miller?

A. He came back from the courthouse, and I told him that someone had called for Mr. Parker's policy. I wonder if we would have it out, and he said that, oh, yes, somebody had already asked him about that, he had met him on the street.

Q. Neither of you at that time had any idea whatever as to the name of the person that asked?

A. No, sir; I didn't.

Q. Did he indicate to you that it was the same day that this man asked him that—— [51]

A. Yes, it was the same day.

Q. ——same day?

A. Yes, within, oh, an hour or two.

Q. Did you try to ascertain by your discussions as to whether it might have been the same man?

A. No, I just assumed that it was.

Q. Now you say you have checked the Metsker

(Testimony of Vanne Vose.)

map to determine whether it was in Multnomah County.

A. Yes, I looked at the Metsker map because I was uncertain as to whether that section is in our county.

(Map of Township 1 S., Range 8 E., W.M., was thereupon marked Plaintiff's Exhibit 110 for Identification.)

Q. I want to hand you what has been marked for identification as Pre-Trial Exhibit 110 and ask you whether that is the sheet of the Metsker map that you examined?

A. Yes, well, it looks to me as if it is, but I wouldn't—

Q. Can you find the property there?

A. Yes, I see Section 16.

Q. On this sheet it has across the acreage there the word "W. R. Winans"? A. Yes, sir.

Q. Was that true on that one you saw?

A. I am not sure, but I imagine it is.

Q. Now, you saw that on the day you got the file on this? [52]

A. Yes, I pulled the file out.

Q. And you noticed that there was a policy there? A. Yes.

Q. But you didn't look to see if there were any notations on the policy?

A. No, it is just a few yellow sheets clipped together, and I was more interested in the chain.

Q. More interested in what?

(Testimony of Vanne Vose.)

A. In the chain, to see if we had a chain in the policy on that.

Q. Just to see whether you had one?

A. Yes, and show it issued a policy.

Q. But you didn't look to see whether there was any notation of any prior payment on the policy?

A. No, I pulled that out more or less to get the prior amount so that I could write the order and so forth.

Q. I appreciate the information, but what I want to know is whether for that reason or for any other reason you did not look to see whether there had been any payment on it? A. No, sir.

Q. Now, when Mr. Parker came in and gave you that slip, is that what he asked you, was that he wanted to get a title report? A. Yes, sir.

The Court: Do you first look at the tract book to find [53] out whether prior policies had been issued?

The Witness: Yes, sir.

The Court: And the tract book showed that a prior policy had been issued?

The Witness: Yes.

Q. (By Mr. Jaureguy): And then did you get a copy out of the file?

A. Yes, got the policy out of the file.

Q. I do not understand why Mr. Stegmann called you—why he said he called you, tried to call you the Saturday before Labor Day.

A. It was Mr. Parker who tried to.

Q. Oh, Mr. Parker?

(Testimony of Vanne Vose.)

A. Mr. Parker; he wanted his policy because he was not going to be able to get it for three days otherwise.

Q. Oh, that is what he told you?

A. No, he did not tell me that.

Q. Well,—

A. He wanted it anyway, I know.

Q. What did he tell you?

A. He didn't tell me anything.

Q. Well, how did you find out he tried to call you the previous Saturday?

A. He told me that.

Q. Oh, he told you that?

A. Yes, sir. [54]

Q. That is all he told you?

A. Well, I don't suppose that is all, but I cannot—

Q. That is what I mean, that is all you can recall he told you?      A. That's all I can recall.

Q. This was on the day after Labor Day?

A. That is when he was in for his purchaser's policy.

Q. On the 30th I think you had accepted the premium for that and given a receipt for it?

A. I don't recall whether I did or not.

The Court: Is there any dispute about that?

Mr. Buell: No.

The Court: They admit it.

(Document, Title and Trust Company bill, August 30, 1951, was thereupon marked defendants Parker Exhibit 106 for Identification.)

(Testimony of Vanne Vose.)

Q. (By Mr. Jaureguy): I show you 106 and ask you whether you recognize that; that is, Pre-Trial 106? A. Yes, sir.

Q. Those initials there, I think they are "V.V.," are they not? A. Yes, sir.

Q. Are those your initials?

A. Yes, they are. [55]

Q. So you issued that receipt?

A. Yes, I did.

Q. You would say on looking at that receipt that you accepted the premium on August 30th?

A. Yes, I would.

Q. That is all.

The Court: Mr. Ryan.

#### Cross-Examination

By Mr. Ryan:

Q. You didn't ask the gentleman or the person who called his name?

A. You mean Mr. Stegmann?

Q. Whoever called in there, did you ask him his name? A. No, I didn't.

Mr. Ryan: That is all.

The Court: Mr. Lindsay?

Mr. Lindsay: No questions.

Mr. Buell: I have one more.

#### Redirect Examination

By Mr. Buell:

Mr. Buell: I wonder if the Crier can get Exhibit 4.

(Testimony of Vanne Vose.)

Q. Miss Vose, why did you write Mr. Parker's order up then as for an order—an owner's policy of title insurance? [56]

A. Well, we don't take an order for just the title report, for one thing. It is an order for a policy, and I probably asked him, I don't know whether he was going—it was a cash deal, and he was going to get a deed or whether he was buying on a contract. I don't know unless it is for that reason that I got the idea that he wanted an owner's title insurance policy.

Q. The Crier is handing the witness Exhibit 4. Does that contain the policy that you referred to that you looked at when Mr. Parker gave his order?

A. Yes, I am quite sure it does.

Q. Can you identify it in the file there?

A. Yes, I have it here.

Q. Is that the original policy you are referring to or what?

A. Well, this is Mrs. Sinclair's file and a copy of her policy.

Mr. Buell: I have no further questions.

Mr. Jaureguy: Could I see that Exhibit? I believe I have a copy of that file.

The Court: It is not the original policy.

Mr. Jaureguy: It is a copy of a typewritten portion of it.

The Court: Yes.

Q. (By Mr. Jaureguy): You looked at this? Did you examine every page of it? [57]

A. No, I probably did not. I probably took the

(Testimony of Vanne Vose.)

names to be sure that I had names in full, and the amount.

The Court: Any further questions?

Mr. Jaureguy: No.

The Court: That is all, Miss Vose. You are excused from further attendance at the trial.

(Witness excused.)

Mr. Jaureguy: I believe Exhibits 2, 3 and 4 were received, but I do not think Exhibit 6 was. If you are not, I want to offer it at this time, the index of the tract.

The Court: I ordered 6 admitted when I looked at it. How about the old policy, the file? Was that 4?

Mr. Buell: That is 4.

The Court: All right. It is admitted.

(Thereupon there was discussion off the record.)

The Court: We will recess until 1:15.

(Noon recess taken.) [58]

Afternoon Session—1:15 o'Clock

Mr. Strayer: If your Honor please, I want to correct a misstatement that I made to the Court this morning which I assure you was entirely due to my ignorance. I was under the impression at the time I was on my feet that this title policy was issued, that the old title policy in Hood River was a title policy for \$2,000 on Lot 1.

The Court: I knew that.

Mr. Strayer: I find I am wrong on that, and the total for the old policy was \$8,000. The title company relied on what appeared to be a title policy for \$8,000.

The Court: It covered Lots 1 and 2, the original policy. Then it was cut down to \$2,000 on Lot 1.

Mr. Strayer: Your Honor was very considerate in not correcting me.

Mr. Buell: We will call Mr. Richard [59] Sythe.

### RICHARD SYTHE

was thereupon produced as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Buell:

Q. Mr. Sythe, where do you reside?

A. Portland, Oregon.

Q. Where are you employed?

A. Title and Trust Company, in the main office.

Q. Were you so employed in August, 1951?

A. Yes, sir.

Q. Were you in the Portland office?

A. Yes, sir.

Q. What was your position at that time?

A. I was a clerk. My duties there were to wait on the public and do certain other things around the office, meet the public when they came in.

(Testimony of Richard Sythe.)

Q. Did you have occasion in August of 1951 to deliver a preliminary title report on this Lost Lake property to Mr. Chet Parker?

A. I delivered a report that was called for from our Hood River branch, and it was addressed to Mr. Parker, yes.

Q. Are you able to recognize the gentleman seated immediately behind Mr. Jaureguy? [60]

A. Yes, I believe that is the man who called for the report.

Q. Was he alone when he came in to get the report, or was somebody with him?

A. As I recall, there was a lady with him.

Q. Would the Bailiff please hand the witness Exhibit 3. I do not have it. It is already received, your Honor.

Mr. Sythe, referring to Page 7 of that exhibit, Exhibit 3, which was just handed to you, can you find that? Have you found Page 7? A. Yes.

Q. In whose handwriting is the phrase, "Collected \$25 for report charge"?

A. That is my handwriting.

Q. Following that phrase is the phrase, "Deal is subject to Timber Cruise." What, if anything, did Mr. Parker tell you with regard to a timber cruise?

A. I don't recall anything that he said, only that he must have said this or I would not have written it down. There was some question regarding the bill, and the deal.

(Testimony of Richard Sythe.)

Q. Was there a bill with that preliminary report?      A. As I recall it, there was.

Q. Did some question arise as to the amount of the bill?

A. Well, no question regarding the amount of the bill as far as the premium was concerned, only that apparently the [61] deal was not ready to go through, and we were asked to bill it out on a report charge rather than to put the full premium at that time.

Q. Did you set the \$25 report charge yourself, or did you have to consult somebody else?

A. No, I consulted Mr. Muschalie who is our treasurer and told him of the facts, and he decided that that would be the figure.

Mr. Buell: No further questions.

### Cross-Examination

By Mr. Jaureguy:

Q. You say you think a lady was with him?

A. Yes, I do.

Q. Ordinarily in the Title and Trust Company are preliminary title reports labeled "Preliminary Title Report"?

A. Not ordinarily, but when an order is taken it is usually taken as an order for a certain type of policy.

Q. Well, what type of a report does the company get out when a person orders a title report?

A. We don't take orders as such.

(Testimony of Richard Sythe.)

Q. You mean if an attorney calls at the Title and Trust Company and says, "I would like to have a title report on such-and-such place," you tell him, "I don't take title reports"? [62]

A. If they want only a report, we suggest what is known as a Lot Book Report.

Q. I am not saying that. An attorney calls up and says, "Now, all I want is a title report. I don't want anything else." I am not speaking about that type of a case. I am talking about the type of a case where an attorney calls up and says, "Will you get me out a title report on such-and-such property?" Then what is said or done?

A. I always make it a habit of telling them that we do not issue a title report as such; that they are issued in connection with a policy, and that if he is not certain at that time what type of policy he wants we go ahead and place an order, and he can determine later what he wants.

Q. That answer goes where an attorney calls and says—you answer the phone—"I wish you would get me out a report on such-and-such property"?

A. That's right; we always try to ascertain whether there will be a policy and the amount of it for billing purposes.

Q. In other words, if an attorney calls up and says, "Will you get me out the title report on such-and-such property," do you mean to say that you always answer him, "I would like to find out what kind of policy"?

(Testimony of Richard Sythe.)

A. Yes, sir; we always say, "Is this report in connection with an owner's policy, purchaser's policy or mortgages on the policy?" [63]

Q. You say you always do?

A. Yes, I most generally always do.

Q. Of course, in your branches is it more customary to give out title reports and collect a fee for those than it is in the Portland office?

A. I am not familiar with the procedure in the branches.

Q. You have been with the Title and Trust Company how long?

A. Four and a half years.

Q. Have you been in the same type of work all the time?

A. No, I worked in the plant department for a year prior to the time I met the public.

Q. What did you do in the plant department?

A. I was a poster.

Q. That is, for a year?           A. Yes.

Q. Then you have been in your present occupation for three years and a half?           A. Yes.

Q. Now, there was not any question in Mr. Parker's mind when he came in that all he wanted to pay for was a title report?

A. Apparently not.

Q. Did you get the impression that he had at some prior time thought he was going to get, pay for something more?           A. No. [64]

Q. Did he give you the name of any company that might be taking title or anybody that might be

(Testimony of Richard Sythe.)

taking title?           A. I don't recall.

Q. Did he say what kind of a deal it was that he—or do you recall anything he said with respect to a timber cruise?           A. No, I don't, just——

Q. In other words, your only reason for saying that he said something about a timber cruise is because you have it here on this document?

A. That is right.

Mr. Jaureguy: That is all. Thank you.

The Court: Mr. Ryan?

Mr. Ryan: No questions.

The Court: Mr. Krause?

Mr. Krause: No questions.

The Court: That is all.

(Witness excused.)

Mr. Strayer: We are calling Mr. Parker as an adverse party. [65]

### CHET L. PARKER

was thereupon produced as an adverse party in behalf of the Plaintiff and Third-Party Plaintiff, and, having been first duly sworn, was examined and testified as follows:

The Court: I was just going to say, Mr. Strayer, I do not think that is necessary to state that. We assume that all adverse parties are adverse witnesses.

### Direct Examination

By Mr. Strayer:

Q. Mr. Parker, where were you living at the time that this Winans transaction first arose?

(Testimony of Chet L. Parker.)

A. I think my residence was at Vancouver, Washington.

Q. How did you first obtain knowledge of the Winans property?

A. Well, as I remember it, Mr. Stegmann told me of it.

Q. When and where did that occur?

A. Well, I think it was at McMinnville, Oregon.

The Court: I did not hear that.

The Witness: At McMinnville, Oregon.

Q. (By Mr. Strayer): At McMinnville, Oregon, on what day?

A. Well, I think it was on a Sunday.

Q. Can you give the date?

A. Well, I can't place the date exactly.

Q. Approximately?

A. Well, I think it was on the 12th probably.

Q. 12th of August, 1951? [66] A. Yes.

Q. Now, the assignment of option, I believe, is dated August 13, 1951. Does that help you in placing the date when you first learned of it?

A. Well, if the 13th, the date is put in correctly, why, then it should have been the 12th.

Q. In other words, it was the day before the assignment of option? A. Yes.

Q. Where in McMinnville, did you see Mr. Stegmann that day?

A. I believe it was at my brother's property and Mr. Stegmann's.

(Testimony of Chet L. Parker.)

Q. Your brother's name is Oscar Parker, is it not?      A. Yes.

Q. And his place adjoins Mr. Stegmann's in McMinnville?      A. Yes.

Q. How did it happen that you were in McMinnville that day?

A. Well, it concerns some equipment my brother was working on that belonged to me, as I remember.

Q. That is, you made a business trip down from Vancouver to talk with your brother about that?

A. Yes, I think that is what it was.

Q. Did you know that Mr. Stegmann was going to be there?

A. No; no, I don't believe I did. [67]

Q. How long before that had it been that you had seen or talked with Mr. Stegmann?

A. That I don't remember.

Q. Do you have any recollection of having talked with him recently?

A. Very possibly I could have.

Q. At that time did you have some business transactions pending with Mr. Stegmann?

A. Well, we had—he owed me some money.

Q. Was that all of the business between you?

A. We had a loan commitment that he could have called about, any checks that he was supposed to call about before he placed them with the bank for collection.

Q. All right; now, I believe that a check had been written on August 11th for \$1,000 by Mr. Stegmann and delivered to Mr. Winans, and I be-

(Testimony of Chet L. Parker.)

lieve the evidence will show that that check was deposited in the Hood River Bank on August 11th, which would be the Saturday before the Sunday, August 12, on which you talked with Mr. Stegmann. Now do you recall Mr. Stegmann calling you regarding that check?

A. No, it is a little faint in my memory, but it seems like the bank, I happened to be down at the bank. They said they had a check in. They wanted to know what to do with it. It seems like that was the check, but I am not sure that was the check. It certainly was some check. I [68] happened to be down there.

Q. Well, then, your best recollection is that Stegmann had not called you before going down to McMinnville on August 12th with regard to the \$1,000 check?

A. Well, he could have, and he could not have, and I would not remember it a year and four months later.

Q. Well, did he ever talk with you about a \$1,000 check before this trouble arose?

A. He would have had to have notified my wife or myself.

Q. Did he talk with you about it?

A. I am a little confused on the question.

Q. Well, I am wondering whether it is your recollection that Mr. Stegmann ever talked with you about the \$1,000 check before your talk with Stegmann on August 12th at McMinnville?

(Testimony of Chet L. Parker.)

A. No, I do not think there was anything made aware of it as far as I am concerned.

Q. Then your first knowledge of the Winans transaction was on August 12th when you saw Mr. Stegmann at McMinville?      A. Yes.

Q. How did it happen that you talked with that day?      A. Pardon me?

Q. How did it happen that you talked with Stegmann on that day?

A. Well, he was at my brother's place or right adjacent there. They both—I think he was out in his garden, as I remember, [69] and I was standing there, and it was a nice day, talking to my brother, and I think he said "Hello" or I said "Hello." Maybe either one of us did. At any rate, we started talking and he brought up the subject of having some timber.

Q. How did he bring it up? Just relate the conversation.

A. Well, I cannot relate the conversation exactly.

Q. As nearly as you remember it.

A. I could not relate the conversation, and certainly there was nothing at that time to make me exactly remember the words.

Q. I appreciate the fact that you cannot remember the exact words, but give me the substance of the conversation.

A. Well, he had some timber to sell me, and he told me approximately the area it was in, and I was absolutely interested.

(Testimony of Chet L. Parker.)

Q. You were absolutely what?

A. Interested.

Q. Well, did he tell you how much it was?

A. I do not know whether he did or not.

Q. All you can remember is that he said that that he told you he had some timber in the area of Hood River?

A. Good timber.

Q. Good timber? A. Yes.

Q. You do not remember whether he mentioned the amount or [70] not?

A. No, I do not.

Q. Did he mention who owned the timber?

A. I don't know whether he did or not.

Q. Did he mention whether he had a contract on it?

A. At that time I don't know whether he did or not.

Q. Did he mention at what price the timber could be bought?

A. I do not remember that.

Q. You don't remember any other details then about that conversation?

A. Not at this time absolutely, no.

Q. What do you mean by "at this time"?

A. Well, I have notes that I made at various times. Naturally, I refer to them, but as I sit here I can't remember absolutely what went on at that particular time.

Q. Well, I will be glad to have you refer to any notes that you have, Mr. Parker, giving your testimony here. Is that the diary that was an exhibit in the case, Mr. Parker?

A. I would presume——

Mr. Jauregui: There is no diary exhibit. There

(Testimony of Chet L. Parker.)

has been a diary marked as Pre-Trial Exhibit under the Judge's ruling, which should be done to refer to it, so it is marked.

The Court: Do you have it?

Mr. Strayer: May I have that exhibit?

Mr. Jaureguy: Yes. [71]

Mr. Buell: 115 and 115-A.

The Court: Is that a sealed exhibit?

Mr. Jaureguy: No, your Honor, it is not. Everybody has seen it. I have given them opportunities to see it because it is not to be used for purposes of impeachment.

The Court: What is that?

Mr. Jaureguy: I mean by me.

The Court: As I recall, I ruled that you would determine whether or not a sheet had any relevancy to this controversy. If it did not, you were at liberty not to show it in the exhibit. Was not that the ruling?

Mr. Jaureguy: I don't recall. I think that perhaps your Honor has in mind some other question that I might have asked. I asked the question whether or not—I do not think that this is important in the present setting, but I asked your Honor whether or not a witness would be permitted to refresh his memory by looking at something unless it had a pre-trial number, and you advised me that the procedure here is that it should be a pre-trial exhibit, and I understood at the time and still do that unless it is for purposes of impeachment then

(Testimony of Chet L. Parker.)

everybody is entitled to look at it and put a pre-trial number on it, so they have all seen it.

The Court: I thought that this came up on your motion to prevent the use of the diary in connection with the taking of certain depositions, and at that time I ruled that—or [72] you had stated that this diary had a number of other items not connected with this controversy, and you saw no need of putting in that diary.

Mr. Jaureguy: Yes, I have obliterated, there has been obliterated from photostatic copies two or three particular matters, and the context above and below, I believe, will indicate to them that I might have good reason for obliterating it.

Mr. Buell: Those matters were with reference to privileged communications of attorney and client, subsequent transaction.

The Court: Well, wait until Mr. Jaureguy objects, and then we will talk about it.

Mr. Jaureguy: You will wait a long time, I think, then, your Honor.

Mr. Strayer: Will you hand this exhibit to the witness, please.

Mr. Jaureguy: I think the record should show, and I want it to show, that the diary has been produced by me at the request of Mr. Strayer.

Q. (By Mr. Strayer): Mr. Parker, you have in your hand Pre-Trial Exhibits 115 and 115-A. Now, are those the notes to which you made reference which would refresh your recollection?

A. Yes. [73]

(Testimony of Chet L. Parker.)

Q. Are there any notes that you had reference to, are there any other notes that you know of that would aid you in placing dates or conversations?

A. No.

Q. All right. Now, will you refer to your notes. I notice, by the way, that they are starting out on August 13. Is that when you started keeping your diary?

A. No, I have had practically all my life a diary.

Q. What is the significance of the fact that this exhibit starts on the 13th? Is that because of that being the date when you first acquired an interest in the property?

A. Well, I suppose so. I can't—

Mr. Jaureguy: That is the first page of the diary that has any reference whatsoever to this Winans or anything connected with Winans.

The Court: This diary is a loose-leaf paper, is it?

Mr. Jaureguy: That is correct.

The Court: Mr. Jaureguy was requested to bring only those sheets which have any relevancy to this controversy.

Mr. Strayer: I see.

Q. And the first entry that you have in your diary with reference to this transaction is on August 13th; is that correct?

A. That is what I have at my disposal here, yes.

Q. Do you recall anything in your diary before August 13th [74] which would have reference to this controversy?

(Testimony of Chet L. Parker.)

A. Not without reading it—August 12th, I would not know for sure. I do not know what August 12th said because I wrote it probably a day or two after August 12th, and, there again, it has been so long ago I would not be able to remember.

The Court: Mr. Jaureguy, will you vouch for the fact that there is nothing prior to that date pertaining to this transaction; is that not right?

Mr. Jaureguy: I do.

Mr. Strayer: Then we will take it as an accepted fact that there is nothing earlier in the diary, earlier than August 13th, relating to this transaction.

Q. Now, is there anything there, then, that would remind you of your conversation, Mr. Parker, with Mr. Stegmann on August 12th?

A. No, not especially. It seems like he might have given me the description on August 12th—or the Sunday, the Monday I went out. I am not sure about that, but it seems like he did.

Q. Does it also seem like he could have given you the price at which it could be bought?

A. Well, I would not say he did or didn't.

Q. Then what arrangement did you make with Mr. Stegmann?

A. To meet him on August 13th, as I remember it.

Q. Where were you to meet him? [75]

A. Lost Lake or Hood River.

Q. Your counsel has called to my attention the entry on your diary of August 13th, Mr. Parker,

(Testimony of Chet L. Parker.)

which starts out, "Walt has an option on I-E-S-N, Section 16."

Now, does that aid you in recalling whether you learned about that on the 12th, or is it possible it was the 13th before you learned about that option?

A. No, I think it was the 12th that he handed me,—of course, that is purely from recollection, but I believe he handed me the subdivision the 12th.

Q. Now, you will notice the second paragraph of that entry under August 13th refers to the fact that, "He wants \$25,000 for a total price of \$100,000. Stegmann has paid down \$1,000 and is to pay out of the money I pay him another \$4,000 on election to purchase."

Is it your recollection that that entry was made after you had been up to the lake at the property and that information consequently received at that time? A. Yes.

Q. You do not think that that was told to you on the 12th?

A. I don't know that it was or was not, but I wrote this after the 13th.

Q. I see. A. Or that night of the 13th.

Q. All right. Now, you drove, then—did you go up from [76] McMinnville on the morning of the 13th?

A. I don't know whether I did or didn't.

Q. Or is it possible you might have gone back to your home in Vancouver on the night of the 12th and then gone from Vancouver to Hood River?

(Testimony of Chet L. Parker.)

A. Well, referring to my notes, I say I stayed all night at Hood River on August 13th, 1951.

Q. I am talking about the night of the 12th, Mr. Parker.

A. Oh, well, I don't know where I stayed the night of the 12th, August 12th, 1951.

Q. What is your recollection as to the time when you arrived in Hood River?

A. Well, I don't remember exactly when I arrived in Hood River.

Q. Was it early or late?

A. I don't think it was either one.

The Court: What do you regard as early?

Mr. Strayer: I beg your pardon?

The Court: I would like to find out what he regards as early.

Mr. Strayer: Yes.

The Witness: Well, 5:00 o'clock I would think would be early, and late would be 1:00 o'clock in the afternoon or so, somewhat.

Q. (By Mr. Strayer): It is your recollection that you [77] arrived sometime in the morning?

A. Well, yes, as I remember.

Q. About 9:00 or 10:00 o'clock, 11:00 o'clock, somewhere in there?

A. I would not know what time during the morning I arrived.

Q. What was the first thing that you did when you got to Hood River?

A. I don't know what the first thing was nor the last thing I did.

(Testimony of Chet L. Parker.)

Q. Well, did you do anything in Hood River?

A. Well, I suppose I did. I ordered a title report.

Q. You did that before you went up to Lost Lake?

A. I don't know whether I ordered it before or afterwards.

Q. Well, what is your best recollection?

A. That is my best recollection.

Q. It does not seem to you any more like it was in the evening than in the afternoon; is that what you mean to say?

A. I don't know whether I ordered it at noon, at 4:00 o'clock, 1:00 o'clock or 10:00 o'clock, or when I ordered it.

Q. Or before or after you looked at the property? A. That's right.

Q. Did you stop in Hood River before you went to Lost Lake?

A. Well, I presume if I ordered the policy I would have had to have stopped.

Q. Well, but did you order the policy before you went to [78] the lake? You said you did not know, as I understood. Do you remember stopping in Hood River before you went to Lost Lake?

A. Well, I have to go through Hood River to get to Lost Lake, so no doubt I had to stop at the stop sign or stop there, yes, but I don't remember any specific thing I did at 9:30 or 10:00 on August 13th, 1951.

Q. Did you stop and get out of the car?

(Testimony of Chet L. Parker.)

A. Well, if I got out of the car, I would have to stop the car, and I don't know whether I did get out of the car or what I did.

Q. Did you meet anybody in Hood River before you went to Lost Lake?

A. I don't know whether I met them before I went to Lost Lake or after I got back from Lost Lake.

Q. Do you remember talking with anybody before you went to the lake?

A. No, not specifically.

Q. By the way, was Mrs. Parker with you that day?      A. I don't remember. I think she was.

Q. Where did you meet Mr. Stegmann?

A. That I don't remember exactly. I think in Hood River, but it might have been on the property or adjacent to the property at Lost Lake.

Q. You say you think you met him in Hood River. What is [79] the reason for that recollection?

A. I might have met him in Hood River.

Q. Do you have any recollection of having met him in Hood River?

A. Well, I might have, and I might not have. I don't—I stayed all night at Hood River on the night of the 13th, I mean—yes, on the 8th month, 13th day, in 1951. My notes place me.

Q. You stayed all night at Hood River on the 13th. Where do you find that?

A. It says, "Dinner and lunch, Hood River, I stayed all night—Hood River—Total—\$12."

(Testimony of Chet L. Parker.)

Q. You think that was, would be the night of the 13th, or would that be the night of the 12th?

A. Well, it is written on the 13th so I presume that I was referring to the 13th.

Q. Do you recall where you stayed?

A. No, I do not. I absolutely do not recall where I stayed.

Q. Where do you usually stay when you stop overnight at Hood River?

A. I don't think that we have any usual place.

Q. Where have you stayed there?

A. Well, I remember one place. I don't know the name of it. It is a motel out to the edge of town. The reason I remember that motel is because my wife complained of them burning the [80] garbage back behind the motel. She didn't like to stay there.

Q. Was that the Lone Pine, by any chance?

A. It might have been. They had one cut-off pine tree in the yard.

Q. All right. Tell us what you did up on that property now, with Mr. Stegmann?

A. Well, I looked at the trees.

Q. Just go ahead; tell us what you did.

A. That is what I did. I looked at the trees.

Q. Is that all you did?

A. Yes, that is what I went for, and that is what I did.

Q. Did you make a cruise?

A. Well, what I call a cruise, yes.

(Testimony of Chet L. Parker.)

Q. Did you look for corners?

A. The two corners we looked at.

Q. Did somebody point out the corners to you?

A. Yes, Mr. Stegmann pointed them out.

Q. Tell us what you did in the way of examining the timber, Mr. Parker.

A. I took a run through it, up through it and down through it, took some notes on it, average diameter of the trees, I separated the species the best I knew. Calculated that there would be about 6,000,000 feet of saw timber or timber come out of those parcels. [81]

Q. How long did you spend doing that?

A. I don't know exactly how long. It is very easy ground to cover; in fact, extremely so. It certainly didn't take me too long.

Q. How many acres did you understand were involved in this tract?

A. Well, it seems like around 55, 56 acres.

Q. Did Mr. Stegmann point out the corners on the entire tract?

A. No, just two corners he pointed out to me.

Q. Did he point out where the lines were, approximately?

A. Well, he told me where the corners were, and I had a pocket compass with me. I naturally knew where I was at.

Q. Did he point out to you approximately where the line was between the two tracts?

A. Pardon me?

Q. Did he point out the approximate location of

(Testimony of Chet L. Parker.)

the line between the two tracts? A. Oh, no.

Q. There were two tracts involved, weren't there, of the 25 and 88 acres and another tract of 40 acres?

A. To me there was only one tract involved.

Q. You considered it only one tract, or Mr. Stegmann did not tell you that there were two separate tracts involved?

A. In purchasing this property then, no. [82]

Q. Yes?

A. No; no, I was purchasing the 57 whatever acres it was.

Q. Well, in making your cruise, then, you made no differentiation as to the location on the property or as to the separate tracts. You cruised the whole area?

A. I cruised the whole area. I separated the amount on Lot 1 from whatever now I guess would be referred to as Lot 2.

Q. Why did you do that?

A. Because that is an individual tract.

Q. Well, then, you did realize that there were two lots involved, two separate tracts involved?

A. No more than I would if I had to cruise a section and I would know there would be 16 quarters in a section of land.

Q. Your point is that you knew that there was more than a quarter-section involved, but you treated it as one tract in your thinking about whether you should purchase it or not?

A. That's right.

Q. You merely followed the customary pro-

(Testimony of Chet L. Parker.)

cedure of making a separate cruise within each legal subdivision; is that what you mean to say?

A. Yes, that was the purpose I had.

Q. Do you still have your notes on your cruise, Mr. Parker?

A. No, I do not.

Q. Do you know where they are?

A. No, I do not. [83]

Q. What is your recollection as to what became of them?

A. Well, I think I tore them up and threw them away. I had a little loose-leaf book, and when it gets full, why I just throw away what I don't want, and I add new pages to what I want to recruise and re-do or whatever I might do with it.

Q. Did Mr. Stegmann help you make this cruise?

A. No.

Q. Did he stay there while you made it?

A. I don't think so. I think he showed me the corners, and then I left him, and whether he stayed there I don't know. I don't know where he went.

Q. Did he give you the legal description of the property?

A. I think he gave me a legal description on the 12th, on Sunday.

Q. Well, then, presumably, you would have had that with you, would you?

A. Yes; then, of course, the corners more or less gave you legal description. They have a brass cap on them telling where you are at, presuming the Government surveyor knew where he was at.

Q. Did you have a map of the property?

(Testimony of Chet L. Parker.)

A. I had a Metsker map, yes.

Q. With you up there at Lost Lake?

A. No, I don't—I think it was in my car at Lost Lake. [84]

Q. Did you check that map before you went up to look at the property?

A. I am not sure whether I did before or afterwards.

Q. How long did you spend on the property cruising the property?

A. I don't remember how long I spent.

Q. Approximately?

A. I don't remember approximately how long I spent. I spent whatever time it took me to walk up through it and back.

Q. Well, was it more than an hour?

A. Yes, it would be more than an hour.

Q. Was it more than five hours?

A. Well, I wouldn't say. It could be, but I doubt it.

Q. Somewhere between an hour and five hours, then? A. I would presume that, yes.

Q. About what time of day was it that you left the lake that day?

A. Well, that I don't remember.

Q. Did you and Mr. Stegmann talk with anybody else while you were up there?

A. Not that I remember at all.

Q. Did you see anybody else?

A. Now, you are talking about Mr. Stegmann and myself together seeing anyone else? [85]

(Testimony of Chet L. Parker.)

Q. Yes.

A. No; no, Mr. Stegmann and myself together, but I don't remember seeing anyone else.

Q. Well, did you see anybody?

A. Well, pardon me. Yes, I saw picnickers, I believe, yes.

Q. Did you talk to them?

A. I might have said "Hello."

Q. You didn't talk to them about the timber?

A. No.

Q. Well, did you see anybody else besides pic-

Q. You didn't talk with anybody about the timber that day?

A. Not that I remember concerning the timber, the trees.

Q. Do you recall about what time it was that you left the lake, what time of the day?

A. No, I do not.

Q. Now, you had driven there and arrived in Hood River, you say, neither early nor late, sometime in the forenoon, I take it; is that right?

A. Yes, it was sometime in the forenoon.

Q. Then you had driven to Lost Lake and it took you about how long?

A. I would say an hour.

Q. So that that would put you, then, at Lost Lake sometime in the early afternoon? [86]

A. Possibly, or earlier in the morning. If I went up earlier, if I went up earlier, why, I would have got there earlier in the morning.

(Testimony of Chet L. Parker.)

Q. It would still have been along toward noon, would it not?

A. It could have been, or it could have been earlier.

Q. Well, then, if you spent one to five hours examining property, it must have been sometime in the late afternoon by the time you got back to Hood River, was it not?

A. Well, if I was there at noon and spent five hours, then it would be later in the afternoon; but if I only spent two hours, it would be early afternoon.

Q. Where did your wife wait while you went to inspect the property?

A. I don't know; I wasn't with her.

Q. What is that?

A. I wasn't with her. I don't know where she went.

Q. Where did you leave her?

A. I just left her on the street.

Q. Down in Hood River?      A. Yes.

Q. Where did you meet her when you came back?

A. As I remember, it was a Richfield Station, but I am not sure about that at all.

Q. Well, is it your recollection that you had an appointment [87] to meet her at the station when you got back?

A. I'm sorry. I met her at the library as I remember, but I am not real sure.

(Testimony of Chet L. Parker.)

Q. At the public library?

A. I believe that was where it was at.

Q. That was by pre-arrangement with Mrs. Parker?

A. As I remember, yes.

Q. Now, you have no recollection of when it was that you went to the title company?

A. No.

Q. It may have been before you went to the lake or after you got back to Hood River?

A. Yes, and it might have been on the 14th.

Q. Did Mrs. Parker go with you when you went there?

A. I don't know whether she did or didn't.

Q. Does it help you any to refer to your diary?

A. No, it doesn't. Well, I haven't got all of the 13th.

Q. What do you mean, you don't have all of the 13th? Isn't this all of the diary on the 13th?

A. Well, it is apparently continued from the page before, but I don't know whether she was with me, went in with me to the title office or whether she did not.

Q. Is there anything prior in there?

Mr. Jaureguy: There is nothing prior to these pages that have anything whatever directly or indirectly to do [88] with this matter.

The Court: I think that unless he has accepted the statement of Mr. Jaureguy that these documents contain all notes which have any relevancy at all to this controversy it may very well be that we will have to order the original document produced.

Mr. Strayer: I will accept Mr. Jaureguy's word

(Testimony of Chet L. Parker.)

a hundred per cent. The only thing that bothers me is that the witness keeps saying something else.

The Court: I will accept Mr. Jaureguy's word, too, but apparently the witness is not agreeable to it.

Mr. Buell: We have two definitions of terms as to what is involved in the controversy.

The Court: Well, with respect to what Mr. Jaureguy said, he agreed that he would put in everything that had any relevancy at all, and I am willing to accept his statement, but his witness is now——

Mr. Jaureguy: The statement I have been making is prior to this time. He has in the diary later on that he came up to see me and such conversations he had before he came up. This covers up to and including October 12th which was the last meeting that they held, so I thought that was enough. At any rate, the only purpose I put it in is because of your Honor's ruling that I could not have him refer to it to refresh his memory; but now I am repeating that prior to this [89] date there was absolutely nothing that has any reference.

The Court: Nobody is concerned about what exists in the diary prior to August 13th. What we are concerned about now and the matter under consideration at this time is whether or not the diary for the 13th is complete as far as any material relevant to this controversy.

Mr. Jaureguy: Yes, it is.

The Court: Very well.

(Testimony of Chet L. Parker.)

(Thereupon there was discussion off the record.)

Q. (By Mr. Strayer): All right. I take it, then, Mr. Parker, on the advice of your counsel you will agree that there is nothing in your diary on the 13th which would serve to remind you of anything further than what you have already testified to?

A. That's right. I agree with him.

Q. Your recollection is that you met Mrs. Parker at the library. You have no recollection whether or not she went with you to order a title policy?

A. I don't know whether she did or she did not. You mean drive over to the——

Q. Well, tell us about your trip to the title company. A. Pardon me?

Q. Tell us about your trip to the title company.

A. Well, I went to the title company to order a report. [90]

Q. What did you say when you ordered the report? A. I told them I wanted a title report.

Q. Was there any discussion of amounts?

A. Yes, as I remember, there was a small amount of, slight discussion as to amounts.

Q. What amounts were mentioned?

A. Well, they pulled out of the file and showed an \$8,000 policy on the property existing at this time, had a map enclosing all of the area or the total amount of area, had a map showing Winans have the ownership of it in their own file, and I told them I wanted a title report on it, and there

(Testimony of Chet L. Parker.)

was discussion that—something about values, and I said well, it would be many, many, many more times \$8,000 if I bought the title policy, but I made it very clear I did not want a policy at that time but strictly a title report.

Q. Was there any mention of the figure of \$50,000 that you recall?

A. Not that I recall, no.

Q. Could there have been?

A. Well, imaginative, yes, but I did not say \$50,000.

Q. All you said was many, many times the \$8,000? A. I did say that.

Q. Had you at that time made up your mind that you were going to buy that timber? [91]

A. Well, apparently not.

Q. Why do you say that?

A. Well, after all, I had not been up there yet.

Q. What is that?

A. If I ordered it in the morning, I had not been up there yet.

Q. You say that you do not know whether you ordered it in the morning or not?

A. That's right.

Q. Why do you say that you had not decided to buy?

A. Well, if I had not seen it, I had not decided to buy it.

Q. If you had seen it, did you decide to buy it when you looked at it?

(Testimony of Chet L. Parker.)

A. Yes, after I had seen it, I had decided to buy it.

Q. And at what price?

A. Well, I figured that I could afford to pay \$125,000 for it, and it would be a good deal.

Q. That was based on your estimate of the 6,000,000 feet of timber of how much per thousand?

A. Well, that figure was all charged back from Portland, Oregon.

Q. I don't know what you mean.

A. Well, I figured a destination of logs at Portland, Oregon.

Q. Explain just what figure you used. You started out with a figure you could sell your logs for in Portland, do you [92] mean?

A. That's right.

Q. Now, what was that figure? How did you work it together?

A. Well, I haven't my notes here, but whatever the log price was at that time less the sawing, dumping, rafting, hauling, yarding, loading, falling and bucking, and of course then we arrive at the stumpage value and how much money I make on the deal.

Q. Do you have some notes that you can use to refresh your recollection?      A. No.

Q. How you computed that; what is that?

A. No.

Q. Those notes have been destroyed, also?

A. Yes, but it is quite—the prices are very typical.

(Testimony of Chet L. Parker.)

Q. Yes?

A. The dumping price was \$2.00, as I remember.

Q. I don't care so much for the details if you can give us your best recollection of the stumpage price that you used in forming your ideas of value.

A. I figured I would get \$30.00 for an average for the timber.

Q. \$30.00 average for the timber times 6,000,000 feet, would that give you an estimate of the value of the property, [93] then?

A. That would give my sale price.

Q. Did that include peelers and saw logs and everything?

A. That is based on the average selling price.

Q. Based on the average?

A. As I determined the timber and as to the amounts.

The Court: That was the gross price that you would receive, is that right? Or was that the net?

The Witness: That is your gross, the selling price I would be selling it for to someone else.

The Court: In Portland?

The Witness: Yes. Now, the stumpage value would be based, taking my selling price at Portland, making the stumpage value \$30.00 based on 6,000,000 feet.

Q. (By Mr. Strayer): What percentage of peelers did you estimate were on that property?

A. I don't remember the estimate of peelable material, but I remember one thing, that I figured that the selling price or at the dump would be

(Testimony of Chet L. Parker.)

around average price, selling price would be around between \$70.00 and \$75.00. I remember that figure.

Q. Well, does that help you in determining the number of peelers?

A. No; no, but the amount of peelers helps determine the sale price. [94]

Q. But you are unable to give us any estimate of the number of peelers you thought were on there, as a result of your cruise, of the percentage of peelers I should say?

A. Are you referring to peelable material?

Q. Well, I don't know. I thought that peelers was the standard term that had a well-defined meaning. Am I wrong on that?

A. Well, in my mind we have peelable material, and we have peelers, and the two are isolated from each other more or less but still have a lot to do with each other.

Q. Well, I am certain that I do not understand. Do you mean, then, Mr. Parker, that lots of logs that might not grade out actually as peelers are actually used as peelers by the mill?

A. That is absolutely correct.

Q. Well, now, did you form some estimate of peelable material, then?

A. Yes, I had it figured out as peelable material that would come off the property.

Q. Percentagewise, what was that figure?

A. I don't remember the figure percentagewise. It would have to figure out anyway f.o.b. the dump.

(Testimony of Chet L. Parker.)

It would be somewhere between \$70.00 and \$75.00 log average.

Q. All right. You got back to Hood River, and did you have a discussion with your wife as to whether you ought to buy [95] the timber?

A. Oh, I don't—I think I probably told her it was a good deal maybe. That is purely speculative. I don't know that I told her. I quite often do.

Q. What did you do? A. Pardon me?

Q. What did you do then?

A. I don't remember exactly what I did then during the—when I got back to Hood River and saw my wife?

Q. Yes.

A. I don't remember exactly what I did then, but in the evening I drove to The Dalles to see Mr. Stegmann.

Q. How did you know where to find him in The Dalles?

A. Because he told me he would be there.

Q. Was he living in The Dalles at that time?

A. Yes, I think so.

Q. Did he give you the address where you could find him? A. Yes.

Q. How did it happen that he gave you that address? Had you arranged that up at Lost Lake, that in case you wanted to buy that you would come down there to see him? A. Yes.

Q. I see. And you and your wife drove down to The Dalles, then, on the evening of the 13th; is that correct?

(Testimony of Chet L. Parker.)

A. Yes. If that is the Monday following the Sunday we were [96] having this discussion, that would be on the night of the 13th, August 13th.

Q. Well, your diary confirms that it was the 13th, does it not?           A. Yes.

Q. Where did you talk to Mr. Stegmann there, at his home?           A. Yes.

Q. All right. I want you to just start right at the beginning and tell us all the conversation that you can remember between you and Mrs. Parker and Mr. Stegmann on that occasion.

A. Well, I remember she was going to make up the deal on a—whatever her paper.

The Court: Who was “she”?

The Witness: My wife was going to type up that agreement, and there was some discussion. It seemed like I brought up the subject of whether he could assign what he had or not. It seemed like there was some discussion on that. There was a discussion on it, but whether it was at that particular time I am not sure. And then there was a little dickering it seemed like. I remember a little dickering on price maybe a little bit.

Mr. Strayer: Pardon the interruption, Mr. Parker. I think that is a conclusion whether there was a little dickering. What I wanted is the conversation, what was said about price. [97]

A. Well, I don't remember. On August 13th, 1951, the evening that I purchased or entered into this deal with some written instruments, I don't remember the words I told or even anything of the

(Testimony of Chet L. Parker.)

deal, the oral things that went on between Mr. Stegmann and myself.

Q. Well, do you remember any discussion about price?

A. Yes, I remember we did some dickering.

Q. What did you say about price?

A. Well, I remember what I said about price. I remember I said I would give him \$125,000. That was in my mind.

Q. What did he say?

A. Well, as I remember, he was not very happy over that price.

Q. What did he want? How much more did he want?

A. I don't remember how much more he wanted. It was more, though. I remember that.

Q. Well, then, you had some haggling over whether he would or would not sell for \$125,000; is that right?

A. Well, there was a dead silence for a while. I remember that.

Q. You cannot remember the price that he was asking nor what the argument was?

A. No; I know my figure was \$125,000. That was the most I could go on it. I wanted to make a profit on it.

Q. Did you have any discussion of the values on the property? [98]

A. Not that I remember, no.

Q. Did you discuss your estimate of how much timber there was on it?           A. No.

(Testimony of Chet L. Parker.)

Q. Did he tell you how much he thought was on it?

A. No, I don't believe he did, but he might have.

Q. But you don't believe that he gave you any statement as to the amount of timber that he thought was on the property?

A. As I remember now, I don't know whether he did or he did not, but I don't believe he did.

Q. Did you have any discussion as to the stumpage value of the timber that was on the property?

A. I told him, as I remember, \$125,000 was the most I would ever pay for it, as I remember the first part of the argument or the discussion.

Q. Well, but you were figuring at \$30.00 a thousand, 6,000,000 feet; you were figuring on \$180,000 transaction, were you not, that you could sell it for that much money?

A. That is exactly what I was figuring on.

Q. All right. Now, was there any discussion about the timber being worth an average of \$30.00 a thousand or any other figure?

A. No, there was not.

Q. There was not any other discussion?

A. Well, there was not. I didn't want him to know I could [99] get \$180,000 for it and hoped to buy it for \$125,000.

Q. Your testimony is that Mr. Stegmann never told you that he thought there was 6,000,000 feet of timber there?

A. Not that I can recollect that he said that.

(Testimony of Chet L. Parker.)

Q. You don't remember him saying anything that he thought the timber was worth \$30.00, \$32.00 or \$33.00 or any other figure per thousand?

A. Really, I would not have paid any attention if he would have, but I would not recollect.

Q. That is not the question. Do you remember him saying anything about that?

A. Not that I remember; no, no.

Q. Why was it that in the assignment of option you made that division of \$90,000 and \$35,000 on the two tracts?

A. Tax purposes. I had in mind also a trust. I was going to set up a kind of a trust fund for my son, and I thought I might have an advantage taxwise by separating it.

Q. Will you explain what you mean there? I don't follow you.

A. Well, apparently it would be hard for me to explain because by the time I contacted my attorney I found that then I didn't even know what a trust fund was.

Q. What did you have in mind there, though, on the 13th? You were thinking of what kind of possible trust fund?      A. That's right.

Q. What did you have in mind? [100]

A. Well, I thought he might log the back end of it and leave the front end and then in that way determine its value.

Q. I am sorry. I did not understand you. Will you repeat that?

A. Well, he might log the quarter-section on

(Testimony of Chet L. Parker.)

the—it would be 16 section, and leave the front portion, and then it would be clear-cut 10 or 15 or 20 years from now just what this deal was if I put that into a trust fund.

Q. I want to see if I have that clear. You are talking about 40 acres or 25?

A. Well, it was 12 instead of 14 and 40 acres, I guess.

Q. Where do you get the 12 or 14? There were 25.88 acres, but under the option he was to reserve 8.88 acres, was he not?

A. I think so.

Q. So that would leave something like 17 acres in one tract and 40 acres in the other, would it not?

A. Well, then, they apparently raised the lake or some silly thing. There really was not 20. They raised the lake a couple feet or something, and there was not apparently 25 acres remaining, and it looked to me they had raised it because the meander corner, if that is what you call it, was out in the lake waist-high almost in water, and, therefore, it was indicated to me that there was not 25 acres, and I determined that, excluding that amount, there would be around 14 acres. [101]

Q. You considered that, then, as a 14-acre tract?

A. That is what I had in mind.

Q. Let's see if I have it right. You were thinking that you might log off the 40 acres and then put the title to that in your son?

A. That is what I had in mind, yes.

Q. Would you put title in your son to begin with?

A. Yes.

(Testimony of Chet L. Parker.)

Q. Then log off 40 acres, and in the meantime take title for yourself to 14 acres?

A. I had a trust set out so that there would be a definite value on whatever of what he might leave.

Q. Of what?

A. Definite value of what he might leave. In other words, I just thought to myself this front tract of timber may deteriorate something, and later on it would be worth only five, six, ten dollars, fifteen dollars, something like that, to him. Then he would have it set.

Q. You are now giving the reason why you thought you would take title to yourself as to the 14 acres; is that right?

A. Well, I thought title would go in his name possibly.

Q. To the whole thing?

A. Possibly, yes.

Q. Well, then, what was the particular point in dividing the price as between the two tracts? [102]

A. If in 20 or 30 years from then it burned over or something happened to the piece that he could not log and it might become an argument, I thought to myself what its value was then maybe he didn't pay enough tax then on his inheritance tax or whatever it might be on the trust fund, is what I had in mind. It could very easily pin to the remaining part then what was its value then.

Q. Did you discuss that with Mr. Stegmann that evening?

(Testimony of Chet L. Parker.)

A. No, no. Pardon me, the trust fund, did I discuss it with him?

Q. Yes.

A. No, I didn't discuss the trust fund with Mr. Stegmann.

Q. You did not discuss with him your thought about the necessity of segregating value as between the two lots?

A. I told him that I wished to, that I wanted to separate it.

Q. But you gave him no reason why you wanted to do that?

A. Not that I remember, that I gave him any reason.

Q. Well, now, is it your testimony that if you did give him a reason it must have been this trust fund that you were thinking about for your son?

A. If I gave him a reason, it would have to have been that reason because that was the reason.

Q. That is the only reason you had in mind?

A. That was the potential reason that I had in mind to [103] separate them.

Q. How did you arrive at the two figures of \$90,000 and \$35,000 on the two tracts?

A. From the cruise I had.

Q. In other words, your cruise that you made up there indicated that if there was—that the ratio of value between the two tracts was \$95,000 on the one and \$35,000 on the other?

A. I think it was ninety and thirty-five, but I am not sure.

(Testimony of Chet L. Parker.)

Q. Yes, I am sorry, you are right. It was ninety and thirty-five, a total of one hundred twenty-five.

A. Yes.

Q. You do not have the figures on which that was based anywhere? A. No, I do not.

Q. Would you consider the cruising that you did there that day a careful cruise?

A. Well, I don't represent myself to be a cruiser.

Q. Well, then, answering my question, I presume you would say that you did not consider it a careful cruise?

A. Well, I wouldn't know exactly what a cruiser would do so I wouldn't know, but so far as I was concerned it was careful enough that I was satisfied that it was a good deal.

Q. Wasn't it a little difficult to separate the timber on [104] the 40-acre tract from the timber on the 14-acre tract without first having a survey of the line between the two tracts?

A. Well, I just paced the lines off. I just paced off a certain distance and let it go at that. I went up through a piece and came back down through it, and I didn't feel that one of them trees, one of them would make any material difference whether I put it on Bill Jones' property or where I put it on.

Q. All right, now. But you agreed with Mr. Stegmann that you would take the timber on that evening of August 13th, and under that agreement you were to pay him \$25,000 for his option, were you not? A. Yes, I was paying \$25,000.

Q. What understanding did you have with him

(Testimony of Chet L. Parker.)

as to the payment of the \$4,000 due on the option?  
What discussion did you have with him?

A. Well, we had a little discussion. He thought I was beating him out of \$4,000, as I remember. I told him that I wasn't sure that was assignable, he ought to go ahead and pay \$4,000, and then with favors excluded out of the deal that he actually was getting \$20,000.

Q. Was that discussed between you and Mr. Stegmann?

A. As I remember, yes, there was a discussion on that.

Q. And he finally agreed, then, on that, to sell his option [105] for \$20,000?

A. I was to give him twenty-five, but he was to pay the four.

Q. He was also to pay the other thousand dollars back to you, was he not?

A. Oh, yes; it was in the other commitment.

Q. So that, in fact, you agreed with Stegmann that you were only going to pay him \$20,000 for his interest?

A. No, I was paying \$25,000.

Q. Well, I think—you were to pay him twenty-five, but he was standing five thousand of the price?

A. Yes.

Q. All right. Did you give him a check then?

A. I don't know whether I even ever gave him a check. My wife gave it to him.

Mr. Strayer: Will you hand this to the witness?

Mr. Buell: Showing the witness Exhibit No. 40.

Q. (By Mr. Strayer): Exhibit No. 40 you have

(Testimony of Chet L. Parker.)

in your hand, Mr. Parker, is that the check that was given to Mr. Stegmann in payment of \$25,000? Is that a photostat of it?

A. Yes, I think it is.

Q. Who signed that check? A. My wife.

Q. Lois Parker? A. Yes. [106]

Q. When was that check made out and signed?

A. Well, it says August; well, I can't hardly tell. August it says it was; I guess it was.

Q. Can you read the date?

A. No, I can't. It is blurred on the photostat, looks like the 14th.

Q. Your attorney has handed me the original check here. If the Bailiff will hand it to you, maybe you can identify the check better. Can you tell the date better on that?

A. Well, it looks like a "14." It has still been scratched over, but it looks like 14.

Q. It looks like it might have been 13, then was scratched out and 14 put in, does it?

A. Well, or a 15 and then 14 put in.

Q. What is your best recollection as to when that check was made out?

A. I didn't make it out.

Q. Were you there when it was made out?

A. That I don't remember.

Q. Do you remember it being made out?

A. Well, it was supposed to be made out, supposed to be given to him, and I think it was given to him that night, but my wife, of course, would probably know.

(Testimony of Chet L. Parker.)

Q. Well, do you have any recollection on it at all?

A. Well, he was paid, I remember, given a check. I know [107] that.

Q. Well, do you have a recollection of handing him a check that night?

A. No, I didn't hand him a check that night.

Q. Who did?

A. I presume my wife handed him the check.

Q. Do you have any recollection of that?

A. No, I can't absolutely say that I saw her hand him that check.

Q. Well, then, you are not even sure that the check was ever handed to him?

A. Well, my wife no doubt handed him the check, but I did not hand it to him.

Q. No, but I am talking about what you saw and observed yourself. You never saw the check handed Walter Stegmann?

A. No, not that I remember.

Q. Do you remember any discussion with him about when he was to be paid?

A. Well, I would presume he would be paid immediately.

Q. No, I am not asking about a presumption. I am asking what you remember. Do you remember any discussion with him as to when he was to be paid?

A. Well, as I recall, the whole deal was he was going to be paid when he signed the assignment of

(Testimony of Chet L. Parker.)

option. He was paid that night. I am sure he was handed this check that [108] night. Whether it was handed to him or laid it down on a table there, I don't know, or his desk, I don't know. It might have been.

Q. In that case, then, there was a mistake on the date on the check? A. Possibly.

Q. Did you see your wife make the check out?

A. No, I can't say that I saw my wife make the check out.

Q. Well, then, you really have no recollection about the check at all?

A. Well, yes, I have a recollection of it, but I don't—I can't just positively say that my wife on August 13, 1951, handed the check to Walter Stegmann.

Q. But your best recollection is that he was paid that night?

A. Yes, I think he was; sure he was.

Q. While you were there in his apartment at The Dalles?

A. Yes, I think he was paid there that night.

Q. Isn't it a little strange that you do not remember the check being made out or handed over, Mr. Parker?

A. Well, it doesn't seem strange to me that I saw my wife hand him the check. I am sure he was paid when the assignment was made. It called for this payment, and the check is here, and he would have had to have gotten the check.

Q. All right. Who made out the assignment of

(Testimony of Chet L. Parker.)

option? [109]           A. My wife did, I believe.

Q. Did she prepare that herself, or did somebody dictate it to her?

A. I believe she prepared it herself.

Q. Was that on her typewriter or Stegmann's typewriter?

A. I believe it was hers. She had hers, and I believe it was her typewriter.

Q. Is that a portable you carry around in the car?

A. Yes, sir; a portable, but it may not be the portable we have now, but it was a portable, as I remember.

Q. Well, do you recall seeing her making out that assignment?

A. Yes, I remember her typing the assignment. The reason I remember, she made a mistake or two, she thought, and she tore up two or three of them and then finally came up with this thing.

Q. That was right then in Stegmann's apartment?           A. Yes.

Q. On the evening of the 13th of August?

A. Yes.

Q. All right. When you left, you had an understanding with Mr. Stegmann that he was to pay \$4,000, as I understand it?           A. That's right.

Q. Was there any understanding between you and Mr. Stegmann as to when that was to be paid?

A. Yes, something was mentioned, seven days thereafter, or [110] something.

(Testimony of Chet L. Parker.)

Q. Well, the option had to be exercised on or before August 18, as I recall; is that right?

A. That is as I remember it.

Q. And your understanding with Stegmann was that he was to pay the \$4,000 before August 18th, is that correct?

A. Yes, or August 18th.

Q. Or on August 18th?

A. Yes.

Q. Did you have any other understanding that you were going to meet with Mr. Stegmann during that intervening period?

A. Well, there was a discussion about a survey.

Q. That is the survey of the reserved area, you mean?

A. Yes, I think there was discussions sometime in between those times about a survey, as I remember.

Q. Well, I had overlooked that. Did you have any discussion with him on August 13th about him surveying the reserved area?

A. I believe we did, but I am not sure. I think we did, that he would do the surveying up there of that reserved area.

Q. Did you have any arrangement for meeting with him at the time that he made that \$4,000 payment; I mean, on August 13th, when you left, did you tell him, "I will go back to town, and we will go up then to see Winans together and pay [111] him the \$4,000"?

A. I believe we made a—I believe he was told I would be there in the evening of the 18th.

Q. Well, now, do you recall any contact with

(Testimony of Chet L. Parker.)

Stegmann between August 13th and August 18th when you went up there to exercise the option?

A. I don't recall any. Well, I do now.

Q. All right. Did you refresh your memory from the diary? Tell me about it.

A. Well, on the 17th, apparently, I saw Mr. Stegmann.

Q. Where was that? The diary indicates at Vancouver, does it not?

A. Well, it indicates Vancouver, Washington.

Q. Do you have any recollection of that?

A. No, not especially.

Q. You will note your diary says, "Seen W. Stegmann and he wants me to go with him to pay Winans so I will know they are paid the other \$4,000. I said I would." Is that your recollection? Does that bring anything back to your recollection?

A. Well, as I remember, we were supposed to meet the night of the 18th at Winans', or I was supposed to be up there.

Q. Does that bring anything back to you about what your agreement was on the 17th on about what you talked with him on the 17th? [112]

A. No.

Q. Well, can't you remember?

A. Oh, something about surveying. It seemed like he had been up there checking it or something.

Q. I don't want to backtrack with you. When you left with him on August 13th—I would like to follow this as nearly chronologically as we can—you had taken the assignment of option. Now, what

(Testimony of Chet L. Parker.)

did you do next with respect to the Winans' property?

A. After I had the assignment of option?

Q. Yes.

A. Well, as I remember, that evening I got in touch with Mr. Smith, and, as I remember, he called me back and said that they——

Q. Who is Mr. Smith?

A. He was the timberman for Multnomah Plywood.

Q. You think you called him on the night of the 14th or 13th?      A. No, the 13th.

Q. Night of the 13th after you left Mr. Stegmann's place?

A. Yes. Now, I am not sure whether before or afterwards, but I am sure it was afterwards.

Q. After the 13th?

A. No, after I left Stegmann.

Q. Would that have been a call that you made at The Dalles? [113]

A. Well, yes, I suppose I would, or at Hood River, somewhere up there.

Q. Did you stay all night at The Dalles, would your diary indicate?

A. I don't know whether I did or not.

Q. Your diary does not say, I guess, where you stayed that night, did it?

A. 14th, I drove to Vancouver, Washington.

Q. That would indicate that you stayed down either at The Dalles or Hood River, I presume, is that right?

(Testimony of Chet L. Parker.)

A. I suppose, yes, one or the other two places.

Q. Well, is it your recollection that you called Mr. Smith?

A. Yes, as I recollect.

Q. Either over at The Dalles or Hood River?

A. Yes.

Q. What was the conversation?

A. Well, I told him I had some good timber to sell him.

Q. Did you tell him about the Winans' tract?

A. I don't think I referred to it as the Winans' tract, but I told him about the timber near Lost Lake and that—that's about all I did.

Q. What did he say?

A. That's about all. He said he would be interested in it. I told him I was in a big hurry to get it cruised and so forth. [114]

Q. There was no definite arrangement made at that time about any further talks?

A. Pardon me?

Q. There was no definite arrangement made at that time about any further talks?

A. Yes, he said he would contact Mr. Kenney, the cruiser, and then he would call me back, as I remember.

Q. Did he call you back?

A. Yes, and in the meantime, as I remember, I contacted Mr. Stegmann to have him show him the corners.

Q. When did he call back, that same night, do you mean?

(Testimony of Chet L. Parker.)

A. Yes, as I remember, he called back that same night.

Q. Then Mr. Smith never called you back. He told you Mr. Kenney would be out to cruise the property?

A. Yes.

Q. On behalf of Multnomah Plywood?

A. Yes.

Q. Do you recall telling Stegmann that that was going to be done?

A. I remember discussing it with Mr. Stegmann because I wanted him to show Mr. Kenney—

Q. When did you tell Mr. Stegmann that?

A. Well, I think it was that same evening.

Q. While you were over there getting the option signed?

A. Well, either—I might have called him or went back— [115] no, it was not while I was getting the option signed. It was after that.

Q. Well, then, you either went back over to his house, or else you called him and told him Kenney was coming out?

A. That's right.

Q. Did you tell when Kenney was coming?

A. Yes, I think I told him the next morning.

Q. Is that your recollection when Smith said Kenney would be out?

A. Yes.

The Court: We will take a recess.

(Recess.)

Q. (By Mr. Strayer): Mr. Parker, I believe we were talking about the arrangements for Mr. Kenney to make a cruise and about your having

(Testimony of Chet L. Parker.)

told Stegmann on the night of August 13th that Mr. Kenney would be out. I notice in your diary under the heading of August 14th the statement that, "Mr. Kenney is going up tomorrow." Does that refresh your recollection as to what arrangements might have been made regarding Mr. Kenney?

A. Well, I thought it was the 14th, but it could have been the 15th. The diary was written each time or generally during the evening or the next day or two, and it would have a better memory than I would. I would hate to argue with it, [116] but I believe it was the 14th he was supposed to be there.

Q. Well, now, I notice, also, that your diary for the 14th states that you met today with Multnomah Plywood, "I seen Multnomah Plywood today about selling them the Lost Lake property. Mr. Kenney is going tomorrow to look at it."

Now, is it possible that it was not until your meeting on the 14th with Multnomah Plywood that you talked with Mr. Smith?

A. Well, it is possible, but I don't believe that is the way it is. I believe this was probably another meeting. I might have came in to see him on the 14th.

Q. Your best recollection still is that you called Mr. Smith the night of August 13th?

A. I am sure that is what happened.

Q. And your best recollection is that Kenney was to go up on the 14th rather than the 15th?

(Testimony of Chet L. Parker.)

A. Yes.

Q. As a matter of fact, the Kenney cruise is dated the 14th, is it not?

A. Yes, I guess so. I never—I never noticed.

Q. I think that is correct, and I won't hold you to that. We will see what the cruise says for that. All right. Now, what happened at this meeting with the Multnomah Plywood on the 14th? Will you tell us about that?

A. I don't remember much about it. It seemed like I outlined— [117] I don't know whether it was on the 14th or a later time I saw them—that I outlined a sales proposition to them.

Q. That was on the 20th, was it not? I think your diary indicates.

A. But I think I might have been to Mr. Smith previous to that, but I am not sure again.

Q. You have no clear recollection in your mind of what was done at the meeting on the 14th?

A. No.

Q. Do you recall there was a meeting on the 14th?

A. I don't know, no. I don't recall that there was a meeting on the 14th other than reading my diary, and it says there was.

Q. Now, what did you do on the 15th?

A. I believe I went up to Hood River the 15th. Now, the only reason that I can say that at all is that I noticed I made a note of Mr. Dufur had came to see my wife, and it seems like that day I remember it that I was up at Dufur, and my wife

(Testimony of Chet L. Parker.)

said that Mr. Dufur was there. Dufur was named after this man's grandfather or somebody, and that day I was at Dufur, and that is the only recollection I have that I could have been at Hood River or up at Dufur, is that.

Q. When was your next contact with the title company, Mr. Parker? [118]

A. I really don't remember.

Q. Well, what arrangement had you made with the title company about getting this report which you had asked for?

A. Well, it seems like I was getting my car greased at Hood River, and my son went over—I told him to go over to the Hood River office of the Title and Trust office and have them send a report or I would pick up a report at Portland, as I remember.

Q. On what date was that?

A. Well, I don't know what date it was.

Q. Could that have been on the same date that you ordered the report, the 13th?

A. No, it was not the same date.

Q. Your son was not with you on that date?

A. I don't know whether he was or was not.

Q. Can you give us any idea of what date that might have been?

A. Well, it was after that time.

Q. How long afterward? A. I don't know.

Q. You think that it might have been on the 15th?

(Testimony of Chet L. Parker.)

A. Well, I think that it could have been on the 15th.

Q. Does your diary indicate that Myron was with you on the 15th?

A. No, but he went with me quite continuously during vacation [119] time.

Q. Your diary indicates that on the 16th you "Drove to Gold Beach and looked at some timber up on the Illinois River. Stayed all night in hills, packed four miles, damn good and tired."

A. I remember that.

Q. You remember that trip. Do you remember what time you got back from Gold Beach?

A. No, I certainly do not.

Q. Was that the date that you picked up the title report at the Portland office?

A. On the 16th?

Q. Yes.

A. I don't know whether it was or it wasn't.

Q. Is there anything in your diary indicating when you got to Portland? A. I don't know.

Q. What is your best recollection as to when you got the title report here in Portland?

A. You mean as to the date?

Q. Yes. A. I couldn't remember the date.

Q. Well, will you glance through your diary and see if you can pick up anything in there indicating when it was?

(Witness consults diary.) [120]

(Testimony of Chet L. Parker.)

Q. Maybe we could get at it this way: I think that the——

The Court: How about the receipt for \$25.00 from Title and Trust?

Mr. Jauregui: Yes, the check is what we are looking for. Let us see 104.

The Witness: I show on August 30th that I drove to Hood River to get title insurance.

Mr. Strayer: Will you hand the witness Defendants' Exhibit 104?

(Document presented to witness.)

Q. Is that exhibit, Mr. Parker, the check that you gave to the title company at the time that you picked up the report? A. Yes.

Q. That is dated August 16, is it not?

A. Yes.

Q. Well, that would indicate, then, would it not, that you went in and picked up a title report on the 16th of August at Portland? A. Yes.

Q. And it is your recollection that that was by arrangement that your son had made with the title company?

A. Well, that is a very dim recollection.

Q. Well, now, what is your recollection? That was the day that you got back from Gold Beach. Is it your recollection that you picked that up when you came back from Gold Beach [121] that afternoon?

A. Well, I don't know whether it was in the morning or afternoon.

(Testimony of Chet L. Parker.)

Q. You could have picked it up on the way down? A. That's right.

Q. You don't know which, but, at any rate, you got a title report, did you, on August 16th?

A. Yes.

Q. Now, on the 17th what did you do? Refresh your memory from your diary or whatever you desire. Incidentally, I think we are both mistaken. According to your diary, Mr. Parker, I note that your diary under date of August 17th says, "Drove home from Gold Beach." So, apparently, you stayed all night in the hills the night of the 16th down at Gold Beach, is that correct? A. Yes.

Q. That would mean that you must necessarily have picked up a title report before you went to Gold Beach? A. That's right.

Q. All right. Then you came back, apparently, from Gold Beach on the 17th and stayed all night at your place in Vancouver, is that right?

A. That is what the diary says.

Q. Well, do you have a different recollection?

A. No, not that. I certainly cannot remember what I did on [122] the 17th. I am not attempting to.

Q. Is it your testimony that this diary is correct? A. Yes, it is correct.

Q. You made these entries on the dates that are on the sheets?

A. Or within a short time thereafter.

Q. Within a day or two afterward?

A. That is right.

(Testimony of Chet L. Parker.)

Q. And while the matter was fresh in your memory? A. Yes.

Q. Now, I note there on August 17th, "Seen W. Stegmann and he wants me to go with him to pay Winans so I will know they are paid the other \$4,000. I said I would."

I think I asked you about that already. You have no clear recollection of having that conversation with Mr. Stegmann?

A. No. I remember there that there was a conversation there.

Q. Was that a personal telephone conversation, or how? A. I don't remember which it was.

Q. Well, what was your arrangement, as you recall it, with Mr. Stegmann regarding closing?

A. Regarding what?

Q. Regarding closing of the transaction with Mr. Winans.

A. Are we referring to the night of the 18th as being the [123] closing with Mr. Winans, or what?

A. Well, that is what I had reference to, yes, the election to purchase. You had some arrangement apparently with Mr. Stegmann on the 17th about going together to see Mr. Winans? A. Yes.

Q. To pay the \$4,000? A. Yes.

Q. Now, what is your recollection as to what that arrangement was?

A. Going to pay Mr. Winans the \$4,000. He was to give him a \$4,000 check, and that I was to come up there that evening, as I remember.

Q. Were you to meet at any place up there?

(Testimony of Chet L. Parker.)

A. Yes, at Winans'.

Q. You were to meet at Winans'?

A. Well, not especially at his house. We were supposed to meet at his office.

Q. Well, does he have an office there in the service station? Is that where you were to meet?

A. Well, that is where we was supposed to meet, yes.

Q. What time of the day?

A. I don't remember. It seemed like it was in the evening.

Q. You did have a definite appointment, as you recall it?      A. Yes.

Q. Did you have any arrangement about notifying Mr. Winans [124] of this intended meeting on the 18th?

A. Well, it seems to me that Mr. Stegmann was going to do some surveying in a day or two—or the day of the 18th, and that he would tell Mr. Winans, as I remember it.

Q. Stegmann was to tell Mr. Winans that you would meet on the 18th, the evening of the 18th?

A. Well, now, I am not positive about it, but I think that is the way it was.

Q. Well, do you recall something of that kind?

A. Well, it certainly is not very fresh in my memory.

Q. Well, did you go there and meet with Mr. Stegmann and Mr. Winans?

A. Well, I didn't go—I went purposely to meet

(Testimony of Chet L. Parker.)

and see that that deal, the election to purchase, was already completed.

Q. You did see Mr. Winans that night?

A. Yes.

Q. Mr. Paul Winans? A. Yes.

Q. At his office in Hood River?

A. No, not at Hood River.

Q. Oh, Dee, is it?

A. Well, he has got an office there.

Q. What is that?

A. He has got an office, and he is not either at Dee or [125] Hood River.

Q. Just where is it?

A. Well, it is in between both places.

Q. At any rate, that is where you met?

A. Yes.

Q. Was that the first time that you had ever met Mr. Winans? A. To my recollection, yes.

Q. Were you introduced to him at that time?

A. Yes.

Q. Who introduced you?

A. I believe, well, either myself—I believe I introduced myself.

Q. Who was present there when you came in?

A. In the office itself?

Q. Yes.

A. Well, it seemed that Walt was there, Walt Stegmann, and another person and Paul Winans.

Q. Who was the other person?

A. I don't know.

Q. Were you introduced to him?

(Testimony of Chet L. Parker.)

A. I don't believe so.

Q. It was a man, I take it?

A. Yes, I think a man, maybe a woman.

Q. Were you by yourself that day?

A. I think I was, yes, but I am not sure. [126]

Q. Is there anything in your diary to indicate that anyone was with you?      A. No.

Q. That, then, is your first meeting, to your knowledge, with Mr. Paul Winans?      A. Yes.

Q. Had you ever talked with him before?

A. In person?

Q. Either in person or by telephone.

A. I don't think I did, but I might have.

Q. Well, do you have any recollection of a telephone call before that time?

A. Well, I have a recollection of a telephone call, and I do not know that it was a day or two before the 18th or a day or two afterwards, or what time it was.

Q. Is there anything in your diary about any telephone call either on the 17th or 18th?

A. I do not seem to find anything.

Q. Had you had any contact with Mr. Winans prior to that time in any way?

A. If it was not with a phone call, why, then I didn't have any contact that I remember.

Q. Well, I assume from the letter that you wrote on August 15th—maybe we had better get the letter. What is that exhibit? [127]

Mr. Buell: 321.

Mr. Strayer: May I have that letter?

(Testimony of Chet L. Parker.)

(Discussion between counsel off the record.)

Q. (By Mr. Strayer): The Bailiff will hand you, Mr. Parker, Exhibits 320 and 321. What are the dates of those letters, Mr. Parker?

A. One is dated on August 11, 1951, and one is dated August 15th, 1951.

Q. The letter of August 11th is a letter, is it not, to you from the bank at Hood River inquiring as to the financial responsibility of Mr. Stegmann?

A. Pardon me?

Q. Would you read the question?

(Question read by the Reporter.)

The Witness: It is addressed to either Mr. and Mrs. Parker, yes.

Q. And Exhibit 321, dated August 15, 1951, did you write that letter? A. No.

Q. Who did write it?

A. Well, since my wife signed it, I would presume she wrote it.

Q. It is signed Chet L. Parker, is it not?

A. Yes.

Q. Is that your wife's handwriting? [128]

A. Yes.

Q. You mean your wife signed your name to the letter? A. It appears that way.

Q. Well, you know your wife's signature, do you not? A. Well, it is not mine.

Q. You know your wife's handwriting?

A. I think it is hers.

Q. Does it look like hers? A. Yes.

(Testimony of Chet L. Parker.)

Q. Have you discussed that letter with Mrs. Parker?

A. No, not to any great length of any kind.

Q. Have you talked to her about it at all?

A. Pardon me?

Q. Have you talked to her about it at all?

A. You mean just very recently?

Q. Yes, very recently.

A. Well, yes; it seems to me like that, in Mr. Jaureguy's, after the things were submitted that there was a discussion about that.

Q. Well, you knew then that your wife wrote and signed a letter, did you not?

A. I didn't know it until I just looked at it right now.

Q. This is the first time you have known it?

A. That I knew who wrote it.

Q. Well, now, at the time that that letter was written or [129] at the time of the receipt of the letter of August 11, 1951, did you discuss with your wife that that was the reply that should be made?

A. Yes, I remember that Mr. Stegmann indicated to me that he was going to do a housing project with Mr. Winans, something to do with irrigation possibilities and some housing, and he was going to trade some stuff off or have something to do with trading equities or trucks or something, oh, work up a deal with him. I remember having that discussion with Mr. Stegmann, and he asked me if I would be interested, and I indicated I very possibly would, and I remember telling my wife that.

(Testimony of Chet L. Parker.)

Q. When was this conversation with Mr. Stegmann?

A. I don't remember. I believe it was while we was up at Lost Lake.

Q. On August 13th? A. 13th, yes.

Q. You indicated that you might be interested in Mr. Winans' housing project?

A. Yes, I would be interested in anything. I told him I would be interested in anything to make a buck.

Q. It is your recollection that you told Mrs. Parker? A. Yes, I mentioned it to her.

Q. Before this letter of August 15th was written?

A. Yes, I think I mentioned it to her before August 15th. [130]

Q. Did you tell her what to write in this letter?

A. No.

Q. She did that on her own?

A. Yes, absolutely.

Q. Did she discuss with you what she was going to say about Mr. Stegmann in this letter?

A. No, no; it seemed like I did tell her to write him a recommendation or something.

Q. A recommendation of Mr. Stegmann?

A. I believe I did, maybe some discussion about recommendation.

Q. When you told Mrs. Parker that, had you seen the letter from the bank about——

A. Pardon me?

(Testimony of Chet L. Parker.)

Q. When you told Mrs. Parker that, had you seen the letter of August 11th from the bank?

A. This is the first time I have ever seen that letter.

Q. Did Mrs. Parker tell you there was such a letter?

A. It seemed like she mentioned it casually to me, but I am not sure she did.

Q. Did she tell you that the bank was inquiring whether Mr. Stegmann could finance an \$80,000 deal?

A. Because of a housing deal, I remember something being mentioned about a letter, and she—either one of these letters I have never seen [131] before.

Q. Well, did Mrs. Parker tell you that the bank wanted to know about his responsibility on an \$80,000 deal?

A. Well, I don't think it was a specific \$80,000 deal. I don't think she ever told me that. I think she did tell me there was an inquiry as to the recommendation or something for Mr. Stegmann.

Q. She didn't tell you how big a deal it was or anything about it?

A. I don't think she did, as I remember now.

Q. You told her to write a letter of recommendation?

A. I don't think that I told her to write a letter of recommendation. I think she wrote this on her own.

Q. I beg your pardon. I thought you said a

(Testimony of Chet L. Parker.)

minute ago that you thought you had told her to write a letter of recommendation?

A. I told her it would be all right to write a letter of recommendation. I think she mentioned it to me casually. It would be all right, but I didn't actually tell her to write a letter.

Q. Did you tell her it would be all right to write a letter and sign your name to it?

A. I didn't tell her it would be all right to sign my name.

Q. Did you find out when you came home that night that she had written a letter?

A. No, I don't—this is the first time that I [132] have actually read either one of these letters.

Q. Do you disapprove of the letter, Mr. Parker?

A. No.

Q. Do you agree with everything that is said in the letter of August 15th?

A. Well, not exactly.

Q. In what respects do you not agree?

A. Well, actually, the phraseology of the thing, I guess you would call it; however, mine would probably be worse than hers.

Q. Well, what do you object to?

A. Well, she has indicated in here he has the necessary funds. I think that should be that he could get or acquire available necessary funds, would be the only thing that I would—and then another thing, I don't know what she meant by "many years," whether that is four or five or a hundred

(Testimony of Chet L. Parker.)

or fifty. That is about the only things that I would disagree to.

Q. That is about the only changes you would make?

A. Well, as of right now I would not even write a letter, but then at that time, why, I suppose that is what the changes——

Q. Now, you say that you would not have said that Mr. Stegmann had the funds or necessary funds. You would have said that he could get [133] them?

A. That I would not have said that I felt sure Mr. Stegmann has the necessary funds, but that it might be available to him, something of that matter.

Q. As a matter of fact, it might have been available to him through you?

A. Yes, it is very possible.

The Court: Is it your testimony that this letter that your wife wrote has no relation to the Lost Lake property?

The Witness: It has to do with the housing project and a pipe line, irrigation deal.

The Court: It does not relate to the purchase of the timber that you ultimately bought?

The Witness: Not as far as I am concerned.

The Court: One other question: Was this a purchase of \$125,000 of timber, a routine transaction as far as you were concerned in August of 1951?

The Witness: Yes.

The Court: You had been purchasing timber in that amount or greater with frequency?

(Testimony of Chet L. Parker.)

The Witness: Well, about once a year.

The Court: Once a year?

The Witness: Yes.

The Court: But you didn't—this was merely routine for you, these various transactions; that is the reason you don't recall? [134]

The Witness: That is right.

Q. (By Mr. Strayer): Mr. Parker, you say once a year. Are you referring to the size of the transaction?

A. Yes, the total amount of business or the total amount of expenditure would be around \$100,000 to \$125,000 on the purchasing of timber, stumpage, and so forth.

Q. Of course, you had a great many smaller deals than this?

A. Well, I mean, all of them combined each year then would make this amount, when I say this amount, \$100,000 to \$125,000 worth.

Q. Did you have a good deal of experience in getting title, experience in connection with these other deals?

A. Well, I have always—I just purchased and gave them a check for it, paid them for it, and they handed me the policy. That is about the extent of it.

Q. No similar deals, that is, where you were buying an option, asking an assignment of option?

A. On taking an assignment of an option was new to me in that respect.

Q. Well, your business has been, say, in a large

(Testimony of Chet L. Parker.)

degree has been in buying and selling timber, has it not?

A. Well, no, no selling—buying and selling some of my timber, but it has also been in logging timber.

Q. Yes, but isn't it a fact that a very large part of your income during the last several years has been from buying [135] tracts of timber and selling timber?

A. I think most of my income probably was from logging, of actual performance of merchandising, bidding on the market. I have not got the figure right at my hand, but I know it was quite considerable, and I made several loans, and I had quite a lot of income from that, too, for many years.

Q. How many transactions have you had, would you say, when you bought timber for the purpose of reselling and making a profit?

A. Probably, strictly a guess, I suppose five or six.

Q. You mean in all of your operations you had only had five or six cases where you bought timber and resold it?

A. For the purpose of, you said, reselling, and that is for the purpose of reselling.

Q. Let us take that out, then. Cases where you bought timber and sold it for profit.

A. Well, in that event, oh, I don't know. It is purely a guess, and that is kind of a hard question to answer.

Q. Well, I won't hold you to any very close limit. Can you give us an approximation?

(Testimony of Chet L. Parker.)

A. Of close limits?

Q. Just give us an approximation. I won't hold you to any close limit.

A. Maybe 50.

Q. In those 50 transactions did you have title insurance [136] in all of them or most of them?

A. Oh, maybe half and half. I don't know.

Q. Did you have any evidence of title on the other half?

A. Abstract. I either had one or the other, an abstract or title insurance.

Q. You always had one or the other?

A. Yes.

Q. Well, now, going back to your meeting on August 18th, the evening of August 18th, at Paul Winans' home, will you just take us right through that meeting and tell us everything that happened then? By the way, I believe I will offer in evidence at this time Exhibits 320 and 321, the two letters I am talking about.

Mr. Ryan: We have no objection, your Honor.

The Court: They may be admitted.

(Documents, letters previously marked Pre-trial Exhibits 320 and 321, were thereupon received in evidence as Plaintiff's Exhibits 320 and 321.)

The Witness: I was there not very long, for a long length of time. It would be purely a guess, but it would seem like maybe an hour or less. I really don't remember vividly anything other than what

(Testimony of Chet L. Parker.)

kind of a deal I was going to get for this property. I was interested in it because from the instruments I had or the papers I had from Mr. [137] Stegmann it did not indicate that I would get either a title insurance policy or an abstract, and I was very interested in which one I would get because I certainly would have to have one or the other, and I preferred, of course, a title policy. Mr. Winans told me and pointed out to me that his instruments did not call for him paying for a title policy, and if I wanted one I would have to pay for it myself, and that is about the extent—oh, there was something about surveying, Mr. Stegmann would be doing the surveying, and from there on he would be dealing with me.

Q. What?

A. That Mr. Stegmann would be doing the surveying of the property from then on, and he would be dealing with me from then on to finish paying for it, and that is about—oh, there was some—then I left alone, if I was alone, and I am sure I was. At least, I left his office alone. No one else went in with me to his office.

Q. Your recollection is that you were there about an hour?

A. Well, it wasn't over that long if shorter.

Q. When you arrived Mr. Stegmann was already there?

A. Yes, I am sure he was.

Q. When you left was Mr. Stegmann there?

A. That I am not sure about.

(Testimony of Chet L. Parker.)

Q. What is your best recollection as to whether you left first or Stegmann left first? [138]

A. I would not, absolutely would not know which one left first.

Q. You haven't anything that you can refer to to refresh your memory on that?

A. No, that——

The Court: I did not fully understand that testimony with reference to the title insurance or abstract. Would you mind reading that testimony?

(Testimony referred to was read by the Reporter.)

Q. (By Mr. Strayer): Mr. Parker, on the subject of who left first I have here a copy of your deposition which was taken on August 7, 1952. Do you recall the occasion of your deposition?

The Court: Do we have copies of those depositions?

Mr. Strayer: Yes.

The Court: Under the practice here the witness is entitled to see the deposition.

Mr. Buell: That is Exhibit 22.

Q. (By Mr. Strayer): Were you not asked this question, Mr. Parker, and did you not give this answer on your deposition:

“Q. Stegmann left ahead of you that evening?

“A. I think he left ahead, but I am not sure.”

Mr. Strayer: Would you hand this to the witness? [139]

Mr. Jaureguy: What page is that on?

Mr. Strayer: Page 230.

(Testimony of Chet L. Parker.)

The Court: Is that the whole question and answer?

Mr. Strayer: Yes.

The Court: You have not impeached him by that statement.

Mr. Strayer: I am trying to refresh his memory, your Honor. I am not trying to impeach him.

The Witness: Well, it is not as fresh now as it was when this deposition was taken. This has been some time ago, too. It is more hazy than ever in going over the recurrence of the event. Normally, when I purchase a piece of timber I don't make a note that I left before Bill Jones or John Doe, or my own memory or otherwise, and I don't remember whether he left first or afterwards, but I believe I left first. I am still thinking maybe I might have left first.

Q. (By Mr. Strayer): You think now that you may have left first. I beg your pardon. You thought when this deposition was taken that you left first?

A. Yes——

Q. No, no; the other way around; you thought when the deposition was taken that he left before you did, and you are now—your best recollection is that you left first?

A. Well, we didn't leave together.

Q. I know, but that is not the question.

A. Well, I am sorry; I can't say whether we left first, last, [140] or when he left.

Q. All right. Now, what conversation took place

(Testimony of Chet L. Parker.)

regarding this notice of election to purchase, Mr. Parker?

Mr. Jaureguy: I wonder if I could interrupt here on a matter that should have been done before? At one of the depositions they asked the Parkers to bring in a copy of that Bargain and Sale Deed which they said they thought they had and also notice of election to purchase, and Mr. Parker gave them to me some time ago, and I put them in that envelope, and for some reason I did not have the pre-trial numbers put on them, and I would like to submit them to Counsel right now, if I might. Might I do it with that explanation?

The Court: Yes.

Mr. Jaureguy: They are in the envelope he gave me. (Presenting envelope.)

The Court: Let us mark them first. Are they marked? Did you reserve a pre-trial number for them?

Mr. Buell: No. 26 is open.

Mr. Jaureguy: And 27.

Mr. Buell: And 27.

(Document, Notice of Election to Purchase, August 18, 1951, was thereupon marked Plaintiff's Exhibit 26 for Identification.)

(Document, Bargain and Sale Deed, was thereupon [141] marked Plaintiff's Exhibit No. 27 for Identification.)

Q. (By Mr. Strayer): You have before you Exhibit 26, which I understand from your counsel

(Testimony of Chet L. Parker.)

is a copy of Notice of Election to Purchase which you delivered to him at his request; is that right, Mr. Parker? You delivered it to Mr. Jaureguay at his request?      A. Yes, I think so.

Q. Yes, and what is that document?

A. Well, it says election, Notice of Election to Purchase.

Q. Is that the copy that you took away from the meeting on August 18th?      A. Yes.

Q. All right. Now, tell us about the conversation regarding the signing of that notice?

A. Well, I was not there when it was signed.

Q. It had already been signed when you arrived, you mean?

A. I am pretty sure it was signed when I arrived. I am not real sure about it, but I think it was.

Q. You think it had already been signed when you arrived?      A. I think it was.

Q. Now, I notice on your copy that the signature of Walter Stegmann does not appear on the top line, is that correct?      A. Yes.

Q. That line is blank? [142]      A. Yes.

Q. Was there a discussion at this meeting as to whether or not that should be signed?

A. Yes, there was some discussion.

Q. What was the discussion?

A. Well, Mr. Paul Winans wanted him to sign it, and Walt, I think Mr. Stegmann says he didn't see why he should sign it, and I said I certainly could see no reason for him to sign it.

(Testimony of Chet L. Parker.)

Q. What led up to this discussion about whether he should sign or whether he should not?

A. I don't know. They had the discussion before I was there.

Q. Were they arguing about it when you got there? A. Well, not violently.

Q. Were they still arguing about it at that time?

A. They was talking about it. It was in the conversations.

Q. And the conversation you heard was that Winans wanted Stegmann to sign it, and Stegmann was refusing to sign it? A. That's right.

Q. On that ground?

A. Well, he said he didn't see why he should sign it, didn't have anything more to do with it. It was up to me now. If anybody should sign it, I should sign it.

Q. In other words, he told Winans in your presence that [143] you had bought his interests, and that if anyone signed it you should be the one to sign it? A. That's right.

Q. Did Winans ask you to sign it?

A. Well, it was mentioned. I didn't give him too much time to ask me. I told him I wouldn't.

Q. For what reason did you refuse to sign it?

A. I saw no reason to sign anything. This was the first one ever been submitted to me. I was going to pay the cash, the money. I saw no reason to go around signing things all the time.

Q. Didn't you regard it as important to give a notice of your election to buy the property?

(Testimony of Chet L. Parker.)

A. No, I was telling him about it. He was posted notice right there.

Q. Did Mr. Winans call your attention to the clause in the option that referred to a written notice of election to purchase? A. Yes.

Q. Notwithstanding that, you felt that you didn't need to sign it?

A. I felt I was not obligated to sign it, and I felt that I didn't want to sign it. I had no legal advice, and I just felt that it was a new one on me, notice of election to purchase, acknowledgment of notice, and all these things, that [144] was a new one on me.

The Court: Who had prepared this document, Mr. Winans?

The Witness: Well, that was my understanding, that he had prepared it.

The Court: May I take a look at the document?

Q. (By Mr. Strayer): Mr. Bailiff, will you hand the witness Exhibit 307? That exhibit also is a copy of the same document, is it not, Notice of Election to Purchase?

A. It looks similar.

Q. Unlike the one that you have, that has the signature of Walter Stegmann on the top line, does it not? A. That is what the name says.

Q. Do you know Mr. Stegmann's signature?

A. Well, not well enough to say that he signed the upper line or the bottom one either.

Q. Is there any controversy on that, Mr. Ryan, or is it agreed that that is his signature?

(Testimony of Chet L. Parker.)

Mr. Ryan: He does not recall signing it. I am not disputing it is his signature.

Q. (By Mr. Strayer): Now, is it your testimony if that is Mr. Stegmann's signature it was not signed in your presence, while you were there?

A. No.

Q. It had not been signed at the time that you left the Winans' place? [145]

A. This is the first time I have ever seen this piece of paper, so I would not be able to know anything about when it was signed or was not signed or when signed.

Q. You would know if it was signed while you were there, would you not?

A. If I saw this, I would know, but this is a new one on me. I didn't even know this yellow one was in existence.

Q. Did you tell Mr. Winans that Mr. Stegmann should not sign it?

A. No, not especially I—in the discussion Mr. Stegmann said he saw no reason to sign it.

Q. Well, didn't you also tell Mr. Winans that Mr. Stegmann should not sign it because he had nothing more to do with the deal?

A. I said I could see no reason for him signing it, as I remember telling him.

The Court: You state that you had never seen that document before?

The Witness: I have never seen this yellow copy before. That is a new one on me.

(Testimony of Chet L. Parker.)

The Court: Have you seen Exhibit 26?

The Witness: I have seen this one here, correct.

Q. (By Mr. Strayer): Exhibit 26 you carried away from the meeting, did you not?

A. Yes, this one here, I am very familiar with that. [146]

Q. You did not see the yellow one at all while you were at the meeting?

A. No, I have never seen that. That——

Q. When you were first talking with Mr. Winans did you tell him that you had brought out Mr. Stegmann?

A. I told him from now on he was dealing with me.

Q. How did that conversation arise?

A. I was there doing business. I wanted to know about the deal, whether Stegmann paid the \$4,000 or not.

Q. What did you say to Mr. Winans when you walked in? You shook hands with him, I assume, told him you were Chet Parker?

A. I don't know exactly the exact words I said or the exact moment I said them. It is not vivid in my memory.

Q. Well, did you say, in effect, that you were there to close up the deal for the purchase of the property?

A. Not to close the deal but that Mr. Stegmann would be out of the deal from now on. It would be Chet Parker he would be dealing with. Mr. Steg-

(Testimony of Chet L. Parker.)

mann would be surveying, and anything to do with the set-out area, why, he would have to do it.

Q. Did Mr. Winans appear to be surprised that you had an interest in it?

A. Well, I don't know whether he was surprised or not.

Q. Had the \$4,000 been paid at the time you arrived? A. You mean the check given? [147]

Q. Yes.

A. I believe it was, but I am not sure.

Q. Do you recall any discussion about that payment at this meeting? A. No; no, I don't.

Q. All right. You left the meeting, then, with that copy of the Election to Purchase. Now, when did you next see or talk with Paul Winans?

A. I don't know when the next time was.

Q. Well, do you have any record to which you can refer that will remind you of that?

The Court: Mr. Parker, did you not testify a short time ago that in your discussions with Mr. Stegmann at The Dalles you had asked Mr. Stegmann to continue with the deal and pay the \$4,000 because you were under the impression that the option was not assignable?

The Witness: Well, I was a little perturbed about maybe it could not be, yes.

The Court: Had you obtained legal advice in the meantime?

The Witness: No.

The Court: And yet your testimony is now that on the 17th you went to the Winans' office and ad-

(Testimony of Chet L. Parker.)

vised Mr. Stegmann not to sign the Notice of Election, that you told Mr. Winans that from now on Mr. Winans should deal with you, is that [148] correct?

The Witness: The night of the 18th.

The Court: On the 18th.

The Witness: Yes.

The Court: You were no longer concerned about the assignability of the option?

The Witness: No, I felt that the time the \$4,000 was given to him, why, that would be the end of it. I could have the deal from then on.

Q. (By Mr. Strayer): Have you referred to your diary, Mr. Parker? Can you tell when it was that you next saw Paul Winans?

A. Well, I saw him on August 31, 1951.

Q. Before you get to August 31, did you see him on the 28th? I notice that you were up at Lost Lake on the 28th. Wait a minute. Go back to August 27th. Your diary states that you called Paul Winans at Hood River and asked him when he wanted to go to Lost Lake and set the corners. Do you recall making that telephone call?

A. Well, now that I read my diary, I do. I don't remember vividly, by any means.

Q. But it does come back to you that you called Paul Winans? A. Yes.

Q. You discussed with him the setting out of the reserved area? A. Yes. [149]

Q. Can you remember any of the details of that conversation?

(Testimony of Chet L. Parker.)

A. No; no, other than apparently when we would be up there to do the job.

Q. Well, when did you tell him you would go up there? A. Well, apparently on the 31st.

Q. You were up there on the 28th, were you not, doing something on the reserved area?

A. Yes, but I don't believe Mr. Winans was there.

Q. You do not think that you saw Mr. Winans on the 28th? A. I don't believe so.

Q. But you were up at the lake with Mr. Stegmann pointing out to him what you wanted him to do in making the survey? A. Yes.

Q. What were your instructions to Mr. Stegmann?

A. I didn't want him to give to Winans any more trees than he had to. I wanted all the timber other than—I was not too perturbed about the cedar, but I didn't want him to get any fir or white pine, larch or hemlock if I could possibly get out of it.

Q. Well, now, on the 28th you had received a title report from the title company, and you had had another meeting with Multnomah Plywood, had you not, at which you had proposed to sell the property to them at \$180,000, is that correct?

A. Yes, apparently.

Q. Your diary indicates that on the 29th you went to Portland [150] to get some legal advice?

A. Yes, sir, to see Mr. Ferris.

(Testimony of Chet L. Parker.)

Q. What was the thing that you thought you needed legal advice on?

A. Well, there was several items came up. One was a trust for my boy. I remember that, and as to the purchaser's policy, an owner's policy when I didn't own the property, any property, and I had this deal with Multnomah cooking, and they would need to have a title policy.

Q. Pardon me. I didn't understand what you said. You say you had a purchaser's or owner's policy?

A. No, not at that time. I was perturbed about them wanting a purchaser's policy——

Q. I can't understand you. You were perturbed about not what? I didn't catch the word you used.

A. We was cooking up a deal with Multnomah. I didn't have any policy of title insurance. I didn't know that I could purchase a policy of title insurance until I owned something I had—that was in my name, and he told me that he thought I was wrong, and he called someone.

Q. Mr. Ferris, you mean?

A. Yes, to verify it, I guess you would say, that he was right and I was wrong, and he assured me that I had a perfect right to purchase a purchaser's policy of insurance with what I had. [151]

Q. And that that was the way to handle it in your dealings with Multnomah Plywood?

A. Well, I don't think he advised me as to how to deal with Multnomah Plywood because we hadn't went far enough on the deal with Multnomah

(Testimony of Chet L. Parker.)

Plywood, but we knew that they would want a title insurance policy because in a previous transaction that is what they wanted.

Q. Well, did you tell Mr. Ferris that you had an option or contract to buy timber in Hood River County?

A. Well, I left all the instruments in his office. He looked **them over**.

Q. Oh, I see. You left with him the option, the assignment of option, and the notice of election to purchase, did you?

A. I don't know how many I left. He would know, but I left the title report, I think, and the option, possibly some other papers.

Q. Then you left the office, or did he make his call while you were there?

A. I think he made the call while I was there.

Q. Then you left and left the papers with him?

A. Well, I believe I did. I mean, I left, I know, but whether I left the papers or not I am not sure about.

Q. When did you get the papers back?

A. Well, it seems that my wife got them the next morning.

Q. What is that?

A. I think my wife might have got them the next morning. [152]

Q. This was on the 29th?           A. Yes.

Q. Did you tell Mr. Ferris that you had a deal on to sell the timber to Multnomah Plywood or to some other purchaser?

(Testimony of Chet L. Parker.)

A. Yes, I think, I think I told him who it was.

Q. In other words, you laid before him the problem: "Here are the papers I have got, the documents of title. I think I have got the property sold. Now, how can I handle this detail?" Is that what you told him, in substance?

A. Yes. I told him I was in a kind of a jam, let us say, I couldn't see how I could—I didn't have a title policy, and how could I give any to anyone else, and I didn't know that I could purchase. I told him I didn't know on an option that I could purchase a purchaser's policy.

Q. You also asked him about this purposed trust arrangement for your son, did you? A. Yes.

Q. Did you tell him you were thinking of putting title to both of these tracts of timber in your son?

A. I don't know whether I referred to these. I told him tracts of timber and various things. I told him it was in my mind to set up something.

Q. Did he advise against that?

A. Well, he spent 15 minutes on it telling me that my idea was all haywire; it was all wrong. I went away a little [153] discouraged, I might say.

Q. Up until that time and after that, in fact, Marsh & Marsh at McMinnville had been your attorneys, had they not?

A. Well, and Mr. Ferris.

Q. You had been going to Mr. Ferris, too?

A. Oh, yes; previously I knew Mr. Ferris.

(Testimony of Chet L. Parker.)

Q. Both of those firms have done work for you and had been doing work for you in the past?

A. Previous; oh, yes.

Q. Yes? A. Yes.

Q. I presume the reason you went to Mr. Ferris was because he was closer than the Marsh boys out at McMinville; is that right?

A. That's right.

Q. Did you think that the deal was so complicated or your problem was so complicated that you could not do it by telephone, could not get your advice by telephone?

A. Well, on this trust setup it certainly was complicated. I thought it would be, and I certainly was not disappointed. It was so complicated that he advised me to come back a month later and he would give me more dope on it or something.

Q. Before you went down to talk with Mr. Ferris had you asked the title company as to just how that detail of that insurance problem could be handled where you were making a [154] sale of property?

A. When I didn't own it yet or had it in my name?

Q. What is that?

A. I am not clear; the same problem that I was confronted with when I went to Mr. Ferris' office?

Q. Yes.

A. No, I didn't ask them whether I could buy a purchaser's policy on an option before I had it paid for; no, I did not.

(Testimony of Chet L. Parker.)

Q. It did not occur to you to ask the title company about that?

A. No; in fact, I presumed that I couldn't.

Q. All right. Let's get on down, then, to the 30th which, I believe, was the day that you went into the title office and ordered a purchaser's policy, was it not, or was it ordered before that?

A. No, I think it is—my diary says it is on the 30th, and I am referring to my diary. I certainly could not recollect that date out of memory.

Q. Well, that would be the date that you ordered them rather than the day that you picked up the policy because I notice that they told you that you could get a policy the following day so the 30th would be the day that you ordered the policy for \$125,000 and paid a premium on it, is that right?

A. I remember giving them a check promptly.

Q. Your diary entry on August 30th also indicates that you [155] saw Walter Stegmann in town. I presume that means in Hood River, does it?

A. I don't know where.

Q. "He had been with Winans today working on their housing financing, and Paul Winans said to tell me if he saw me that he could and would go to Lost Lake now and agree with me on the land to set aside."

A. Well, your language is better than mine. It really says "seen," I have here. You said "saw." It says "seen" here. Your language is better than mine.

(Testimony of Chet L. Parker.)

Q. The sense of it is the same, is it?

A. Yes.

Q. Do you recall Stegmann telling you that?

A. Yes; well, since I read the diary it reconstructs this thing in my mind.

Q. As you reconstruct it, Stegmann gave you a message from Winans that he was supposed to give to you?

A. Yes.

Q. All right. Then, on the following day your diary indicates that you and Walter Stegmann and your son, Myron, Paul Winans, Ross Winans all went to Lost Lake to set out that 8.8 acres. Now, I wish you would tell us about that trip, Mr. Parker.

A. Well, we drove all in the same car. I believe it was my car, but I am not sure—from Winans' office to Lost Lake, and we cut some brush and pulled a tape around in the brush, [156] measured a little land. Mr. Stegmann took a lot of notes, and that's about all. We went back home.

Q. Going back to August 30th for a moment, I notice a note in your diary that after Stegmann gave you this message from Winans: "I called Paul and confirmed it." Does that mean that you called Paul Winans?

A. Well, apparently.

Q. Do you have any recollection of having done that?

A. No, I don't remember calling him.

Q. Then on the 31st you were up there, and you were helping in the survey of this reserved area, were you, or was that the survey of the tracts themselves?

A. No. I was helping Walt survey the—I really

(Testimony of Chet L. Parker.)

don't know what we was surveying. We was running around there cutting brush, pulling a tape through the brush. I guess we were surveying the excluded area or attempting part of it or something.

Q. Now, did you have any discussion with Mr. Winans on that day about anything?

A. Yes, about the amount of acres.

Q. Anything else?

A. Well, he wanted all the lake frontage.

Q. You had an argument about that particular area that would be reserved to him; is that right?

A. Sure; he was getting everything but a hundred feet of lake [157] frontage, and I thought to myself I would like to have a little more than a hundred feet left of lake frontage. I remember having a violent argument. No one engaged in fisticuffs exactly, but I won't deny that I wanted to.

Q. That is the only thing that you can recall discussing with Mr. Winans on that day?

A. Well, we made a discussion, and finally he said I could have—he would be very generous with me, would give me three or four hundred feet of frontage, and he would take fourteen or fifteen hundred feet and any other additional property would be had into the acre. I believe we sat down and figured out that at that time.

Q. Well, I note that your diary says you got back to Hood River too late that evening to get your title policy, and on the following day, on September

(Testimony of Chet L. Parker.)

1st you and your wife went to McMinnville to see some timber on Pea Vine so I take it that is where the Labor Day week end came in which resulted in your not getting the policy until the following week; am I right on that, Mr. Parker?

A. Well, I suppose yes.

Q. What is this timber down on Pea Vine? Is that a locality, Pea Vine?

A. That is a mountain out of McMinnville.

Q. A mountain out of where?

A. McMinnville, Oregon. [158]

Q. What was that, timber you were buying?

A. Well, I don't know whether I was buying or someone—some sidewalk broker might have told me about it, apparently. I have here in parenthesis, "No good."

Q. In other words, you went down to look at a tract that you thought you might be interested in?

A. Well, yes, that is——

Q. Is that by any chance Mr. Stegmann's timber that you went to look at?

A. No, no; absolutely not. In fact, I believe—I am not real sure, but I believe that was concerning Mr. Johanson's timber.

Q. Well, now, I note according to your diary your next contact with Winans, or Stegmann, for that matter, appears to be on September 4th. Apparently you took a man by the name of Paul Wardell up to Hood River. Who was Mr. Wardell? Why did you take him up there?

(Testimony of Chet L. Parker.)

A. I took him up for that housing deal that Mr. Winans was cooking up, an irrigation business.

Q. How does it happen that you took him up?

A. Well, as I remember, as I indicated, from the beginning, I was somewhat slightly interested in this housing deal, and Mr. Wardell has been—his father was quite a businessman, quite a trader, a promoter, too, and Mr. Wardell—I mentioned it to him. [159]

Q. Mentioned it to whom?

A. Mr. Wardell; and he was going to go up and look at it, and, as I remember, I drove him up.

The Court: Look at what?

The Witness: This housing project.

The Court: Where was that? Where was the proposed site of the housing project?

The Witness: At Dee and Hood River.

The Court: Is that in part of that Lost Lake property?

The Witness: No, it is isolated by 20 miles or so.

Q. (By Mr. Strayer): As I understand your testimony, then, you took Wardell up to look at Winans' housing project with the thought in mind that you might be interested in going in with Winans on some kind of an arrangement on the housing project?

A. Well, no, not that I would go in with Winans. I thought that Mr. Wardell might go in with Winans, with Paul, Wardell and Stegmann and Winans would get together on a deal.

Q. Wardell, Winans and who?

(Testimony of Chet L. Parker.)

A. Walt Stegmann.

Q. What were you doing, just trying to help out Stegmann?

A. Well, I was being a good fellow.

Q. How did you get in touch with Wardell?

A. I drove out to see him, I think. I don't know.

Q. You looked him up to see if he might be interested in [160] this housing deal? A. Yes.

Q. Just as a favor to Stegmann and Winans?

A. Yes, and possibly a favor to Wardell, if it was a good deal as everyone was telling me it was a good deal. I presumed they knew.

Q. Were you or were you not still a little interested yourself in the housing business?

A. Well, if there was—very slightly. I had never told Mr. Winans I was interested.

Q. Did you see Mr. Winans on that day?

A. Yes—which Mr. Winans are you referring to?

Q. Well, either of them. I was thinking Paul Winans, but did you see any of the Winans on that day?

A. Well, I saw Ross Winans and, I think, Paul Winans.

Q. Did you discuss anything with them on that day?

A. I think I introduced Mr. Wardell to Paul Winans, and I talked to Ross Winans some time about my son, I believe, slightly. That's about all. I didn't enter into the transaction between Mr. Paul Wardell and Mr. Winans; very, very limited.

Q. Well, did you tell Mr. Winans that Wardell

(Testimony of Chet L. Parker.)

was interested in the housing project, or might be?

A. No. Mr. Wardell was there speaking for himself whether he would be interested or not. I introduced him and told him to [161] take off from there.

Q. Did you see Stegmann that day?

A. Well, I don't remember seeing him that day.

The Court: Was Stegmann interested in that housing project, also?

The Witness: Yes.

The Court: Stegmann and Winans and you were contacting Mr. Wardell who might go in with both of them?

The Witness: Yes.

Q. (By Mr. Strayer): I notice the next entry in your diary that seems to have any reference to this sale of timber appears to be on September 9. The entry in your diary says: "Lois and I drove to Mack to get bank draft tomorrow. Lois bank draft to the amount of \$95,000, is payment to full to Ethel Winans."

Do you recall that incident?

A. Well, I remember driving down there.

Q. To McMinnville?

The Court: I think we are getting into a new subject matter. It is 4:00 o'clock. We will take one more short recess. Then we will go to about 5:30.

(Recess.)

Q. (By Mr. Strayer): I think we were down to September 9th on your diary, Mr. Parker, which

(Testimony of Chet L. Parker.)

indicates that on that date [162] you and your wife drove to McMinnville to get a bank draft for \$95,000.00?      A. Yes.

Q. Mr. Jake Wortman that was mentioned in there, he is an officer of the McMinnville bank, isn't he?      A. Yes, I guess he is.

Q. Do you have any recollection of driving to McMinnville that day with Mrs. Parker?

A. I don't remember driving, but I think we did.

Q. You what?

A. I think we drove down to McMinnville.

Q. You do remember that, and do you remember that the purpose was to get a draft for \$95,000?

A. Yes, that was the purpose, as I remember it.

Q. And that was the draft in order to close the transaction with Mr. Winans, was it?

A. Yes.

Q. How did it happen that you went down to get a bank draft? Why didn't you use a check?

A. Well, as I remember, Mr. Winans had told me that I would have to pay him with a certified check or something like that, bank draft.

Q. When was that conversation?

A. Well, sometime during the surveying or sometime previous to this. [163]

Q. Sometime when you were up surveying the reserved area, you mean?

A. Well, either that or previous to this. When I had met him it came up.

(Testimony of Chet L. Parker.)

Mr. Jaureguy: Would you try to speak up a little louder.

The Witness: But it had, previous to this Sunday. He had indicated to us that he wanted cash.

Q. (By Mr. Strayer): How did that conversation arise?

A. Well, I wanted to know—I think I asked him which he was going to take, my personal check or a draft or what it was, and I think, as I remember it, he indicated that a certified check or a bank draft——

Q. Did you point out to him that he had taken personal checks for the two first payments?

A. No, I did not point it out to him, but in my own mind I felt that in this case he was giving title, and before he didn't give any title.

Q. So that it was logical to require a bank draft in this case, you mean?

A. Well, we had in the past been required to give, I would say, guaranteed payment in other deals.

Q. You didn't argue with him about that?

A. No.

Q. You thought that was a reasonable request?

A. Well, I thought it was. It didn't make any difference [164] to me. It would be the same difference, and I had to pay it.

Q. Where did that conversation take place where Mr. Winans told you he ought to have a cashier's check or a bank draft?

A. Well, I don't remember when or where.

(Testimony of Chet L. Parker.)

Q. Who was present at the conversation?

A. I don't remember that. I remember him telling me, or I am not sure whether I didn't tell him that I would give him that if he wanted it. Maybe I told him that.

Q. Well, now, how did it happen that you drove down to McMinnville on the Sunday to get a bank draft?

A. Well, I told him that that deal had to be finished on the 10th.

Q. When did you tell him that?

A. Well, previous on some of these surveys. There seemed to be a lot of delay in setting aside this reserved area. In fact, so far as I was concerned, too much, and after the argument we had on the bridge, why, I was a little bit, I was a little bit angry, a little mad about it.

Q. Do you have a pretty clear recollection of telling him that it had to be closed by the 10th?

A. I told him if the deal was not being completed by the 10th I didn't want anything to do with it, just forget about the deal.

Q. Do you have a clear recollection of [165] that?      A. Yes.

Q. Have you refreshed your recollection from your diary or any other source?

A. No, I remember.

Q. Is there anything in your diary about that?

A. Well, I would have to read it to see.

Q. Is it your recollection that on that same

(Testimony of Chet L. Parker.)

day whenever it was that you told him it had to be——

(Thereupon there was discussion between counsel off the record.)

Q. (By Mr. Strayer): Oh, yes, Mr. Jaureguy calls my attention to September 8th of your diary, the last sentence:

“Winans called and said they were ready to deal finish.”

Does that bring anything back to you?

A. Well, apparently they did.

Q. Well, do you remember?

A. It is not vivid in my memory by any means.

Q. Well, is it in your memory at all?

A. Well, since I read the diary it naturally influences my memory, and I think I remember it, yes.

Q. I noticed that you had spent the night before, the night of the 7th, at Lost Lake, I guess, with your wife and your boy. You camped out there on the lake, is that right?

A. Well, adjacent to the lake. [166]

Q. Yes, and you drove down from Lost Lake, according to your diary, at 9:00 a.m. on the morning of the 8th, I assume, down to Hood River; is that right?

A. I don't know whether 9:00 a.m. is——

Q. I don't care about the time of the day particularly. A. Yes.

Q. But is that your recollection that after camping out all night up there you drove down in the morning to Hood River? A. Yes.

(Testimony of Chet L. Parker.)

Q. Where were you when Mr. Winans called you? A. Well, I don't remember.

Q. How did he know how to reach you by the telephone?

A. Well, I don't know whether I called him or he called me.

Q. Your diary says, "Winans called," does it not?

A. Well, but then I quite often used that word loosely. I called or he called or Bill Jones called.

Q. You think you might have called Winans, and he told you they were ready to close?

A. I am sure I called Winans.

Q. That would be the reason that you left on the following day to get the bank draft?

A. Yes, and that I had assured him on the 10th I wanted that deal made.

Q. Is it possible that on this telephone call on the 8th that is the time that you told him it must be closed on the [167] 10th?

A. Well, it is possible, or previously.

Q. Is it possible that that is the time also that he told you it must be a certified check or bank draft?

A. Yes, at the same time he told me that, and it could have been that.

Q. That might have been the time?

A. Yes, it could have been that.

Q. Well, now, how did you arrange for a bank draft on Sunday, Mr. Parker?

(Testimony of Chet L. Parker.)

A. You have to ask my wife that. I didn't obtain that.

Q. She was the one that arranged for a bank draft at McMinnville? A. Yes.

Q. Is it your recollection that you drove back to Hood River that night?

A. Well, I don't remember where we drove to.

Q. Can you tell from your diary?

A. I don't notice anything in here saying where we went.

Q. All right, then. Referring to September 10th, the September 10th entry in your diary, you describe there some discussion with Mr. Winans about a price that you had agreed on as \$4,750 for some extra land that he wanted to reserve. Now, when did that subject first come up? Was that occasion on September 10th, or had you discussed that [168] before?

A. No, we discussed that on the bridge at——

Q. Had you discussed the amount of extra land that he wanted?

A. Yes, there was discussion about that.

Q. That was on your survey trip on August 28th, was it?

A. Yes, where Mr. Stegmann was the surveyor for us.

Q. That is August 31st?

A. It was whenever Mr. Ross Winans and Paul Winans and my son and I were up there.

Q. Yes; well, according to your diary that was

(Testimony of Chet L. Parker.)

on August 31st. On that occasion he told you he wanted extra land?

A. Yes, well, figured out there would be extra land.

Q. When did you agree on a price for that extra land?

A. We agreed on \$1800 an acre, something like that.

Q. How did you arrive at that figure?

A. It wasn't easy. It took a half-hour arguing back and forth as to the values, and he wanted to take in all that creek running on up into this one-quarter, of this other 16 section. I told him I didn't want any reservation going into that 16 section. Then he dropped that idea, and then he wanted all the frontage and would take—and, as I remember, 300 feet back from the lake front, but then I could have the rest of it cutting me down to probably 150 feet on the front and cutting off about half a million feet of timber. I didn't mind him getting lake frontage, but I didn't [169] want him to get any of my good trees, and that is what we was arguing about.

Q. How did you arrive at the value of \$1800 an acre?

A. Well, if that was the value—it was somewhere in there—that I indicated to him, that is what I would take for it, and any additional land would be whatever value I set at that time, but I didn't want it to include any timber, and I would not hold still for any timber going into any reserved area.

(Testimony of Chet L. Parker.)

Q. Did you finally agree on the reservation? You finally did agree, did you not? A. Oh, yes.

Q. And under that agreement did he reserve any timber?

A. No, no timber that is worth a darn.

Q. So that your arrival at a figure of \$1800 or whatever it might have been per acre was not based on the value of the timber? A. No.

Q. Well, then, on what did you base the price of \$1800 an acre?

A. Whatever value it was was the most I could get because we spent 15 minutes arguing about an extra \$500 an acre. In other words, it was sitting right there bargaining and how much I could get out of it. He didn't think it was worth near as much as I was charging him for it.

Q. Did you think it was worth \$1800 an [170] acre? A. Then did I think so?

Q. Yes.

A. Well, it was all—whatever I could get, that is all I got. No, I didn't think it was worth that much, not as far as I was concerned, it wasn't worth paying taxes on.

Q. Well, did you agree then on this \$1800 an acre or whatever figure that may have been on August 31st when you were arguing up there on the bridge?

A. Yes, we agreed on whatever it would be an acre, whatever it would figure out to be.

Q. Well, now, of course, the total price for the additional reserved land would have to be figured

(Testimony of Chet L. Parker.)

out when you had the exact acreage in the reserved area, would it not?      A. Pardon me?

Q. The total price that Mr. Winans was to pay you for the additional reserved area would have to be based upon whatever acreage figure you had, multiplied by the number of acres that he retained, would it not?

A. To be determined at a later date because——

Q. That was merely preliminary. I want to know when that was determined.

A. At a later date.

Q. Yes, but what date?

A. Well, when Mr. Stegmann and Mr. Hines got their survey completed so that they would know how many additional acres [171] he would have.

Q. When was that, on what date?

A. I guess they completed it on the 10th. I don't know.

Q. When was your first knowledge that it had been computed and worked out to be \$4,750?

A. When my wife brought home a check and the deed.

Q. You did not know before that?      A. No.

Q. Well, then, your entry on September 10th: "Winans said he might want more land, and we agreed on a price of \$4,750 for the land,"—when was that entry made?

A. That must have been made right about the time.

Q. You didn't get the deed and didn't deliver

(Testimony of Chet L. Parker.)

the check until the following day—your wife didn't?

A. Well, what I meant to say is the notes that went in the deed say in the description so we would know how much area it would be.

Q. Did you see that on the 10th, the deed to that——

A. Well, I saw some notes so I would know how much area there would be in addition.

Q. Well, what did your entry there mean: "Winans said he might want more land, and we agreed on a price of \$4,750"?

A. We agreed at that time on \$4,750 on additional land he would want, only he might want more from there before I got the deed back, before I got the deed. [172]

Q. Now, when was that that you and Mr. Winans agreed on this figure of \$4,750? Was that on the 10th?

A. That was previous to the 10th, I think.

Q. On what date was it?

A. I don't know what date it was, whenever we was up there.

Q. Well, that would be August 31st, you mean?

A. Possibly could have been, yes.

Q. Well, then, we have got to backtrack, then. You did something more than talk about \$1800 per acre. You talked about a fixed price for that additional area, \$4,750?

A. But it was figured on so much an acre.

Q. Yes, but you arrived at apparently how much

(Testimony of Chet L. Parker.)

per acre it was because you arrived at a fixed price of \$4,750 on August 31st; is that your testimony?

A. Well, Mr. Winans reserved that end, that Mr. Stegmann's figures might be wrong. He said if Mr. Stegmann's figures is right, then that would be the right amount; but if Mr. Stegmann is wrong, then it would not be that amount.

Q. I see. So you had what you might call a tentative agreement on August 31st on \$4,750, but that was subject to confirmation of the survey; that is your testimony? A. That's right, yes.

Q. On September 10th, then, your entry in your diary is merely making reference to a previous agreement which you had with Mr. Winans, is that right? [173] A. Well, yes.

Q. And you made reference there to the difficulty they were having in figuring out the metes and bounds and what a difficult job it is so, apparently, at that time there had still been no absolute verification of the acreage; am I correct in that assumption?

A. As far as I was concerned, no verification.

Q. All right. Now, as I understand it, Mr. Parker, I understand that you had other business on the 10th and were not able to take care of this matter yourself, and you turned over to Mrs. Parker to close the deal. Am I right on that?

A. Yes.

Q. I note, according to your diary, that you instructed her to consult with Attorney Abraham in Hood River? A. Yes.

(Testimony of Chet L. Parker.)

Q. Mr. Abraham had done legal work for you in the past, had he? A. Yes.

Q. Just exactly what did you tell Mrs. Parker to have Mr. Abraham do?

A. I told her to have Mr. Abraham close the deal.

Q. What did you mean by that?

A. Pardon me?

Q. What did you mean by to close the [174] deal?

A. Well, give the people the money and take a deed back.

Q. She could have done that herself, couldn't she?

A. I don't know whether she could have or not.

Q. You had a bank draft for \$95,000, and she could have handed that bank draft over to Mr. Winans and could have taken the deed, couldn't she?

A. Well, if it would be as simple as that, yes, she could, but I don't believe that attorneys do things that way. I believe that they had to go back and check the record to see if what we had on our reservations were taken off the record, and I don't believe she is capable of doing it. At least I didn't feel she was.

Q. That is exactly what I am trying to find out. You wanted Mr. Abraham to do something more, to check over that timber. You wanted him to check the record to see if there had been additional transfers or mortgages, anything else?

A. Yes, and to look at this bargain and sale.

(Testimony of Chet L. Parker.)

Q. And draft a new deed?

A. Yes, because that was a new one on me.

Q. All right. Now, your diary entry indicates that Lois—I take it that is Mrs. Parker—“got a deed, bargain and sale, 4:30 p.m. Too late for Mr. Abrahams to get a good look at it.”

I take it that is your entry, that that is based on something that she told you. You had no personal knowledge [175] of that, is that right?

A. She told me. I wasn't there.

Q. You say: “Lois and I finally decided to put it in my name instead of Associated Engineers, but we can write it in, I guess. Lois and Abrahams decided to wait until morning to close the deal.”

Do you recall that discussion with Mrs. Parker?

A. Yes.

Q. On the evening of September 10th?

A. Yes, it would have to have been the evening.

Q. Well, now, as a matter of fact, did Mrs. Parker show you the deed that you were figuring on filling in? A. I think she did.

Q. As a matter of fact, wasn't that merely a copy of the deed that she had at that time?

A. I think it was.

Q. Do you know where she got that copy?

A. No, I don't know where she got the copy.

Q. Didn't she tell you that Mr. Stegmann had given it to her? A. No.

Q. You looked the deed over that night?

A. Well, I looked at it.

The Court: What night are we talking about?

(Testimony of Chet L. Parker.)

Mr. Strayer: The night of September 10th. [176]

The Court: Is that a Monday?

Mr. Strayer: Pardon?

The Court: September 10th is a Monday?

Mr. Strayer: Yes.

Mr. Buell: Yes.

Q. (By Mr. Strayer): You recall looking at a copy of the deed that night of September 10th?

A. Well, I possibly looked at it, but the reason I question a little bit, I don't know anything about a deed so I suppose I might look at it and still not know anything about it. I don't understand it anyhow.

Q. To refresh your memory, Mr. Parker, had not Mrs. Parker been up to see Attorney Abraham on September 10th before you got home that evening?

A. Yes.

Q. As a matter of fact, don't you know that the deed, the copy of the deed, had been delivered over to Mr. Abraham on that day, September 10th?

A. Well, as I recollect, she told me so.

Q. Well, now, didn't he keep the deed, that copy of the deed?

A. I don't know whether he did or didn't.

Q. If he did, you could not have looked it over?

A. That's right.

Q. All right. But you do recall discussing with Mrs. Parker [177] who your grantee was going to be?

A. Yes.

Q. By that time you had given up any idea of putting in your son's name?

A. Yes.

(Testimony of Chet L. Parker.)

Q. But you were still playing with the idea of possibly putting in the name of Associated Engineers? A. That's right.

Q. Associated Engineers, as I understand it, is an assumed business name of your own?

A. Yes.

Q. You are the sole owner of the business known as Associated Engineers?

A. Yes, I am now.

Q. Were you at that time?

A. Yes, at the time of this entry there.

Q. And you instructed your wife then to write in your name on the deed when the transaction was closed the following day? A. Yes.

Q. Did you see Mr. Stegmann that day at all?

A. I don't think I did, but I might have.

Q. Did you know that he was over in Vawter Parker's office working out the final details of this deed?

A. I think I knew about it. [178]

Q. How did you find out about it?

A. Well, he would have to be there. I mean, possibly my wife told me.

Q. I note in the latter part of your entry in your diary on September 10th you say that you paid Walt off for his work on the lines, and in substance you say that Walt apparently had a hard time in working out the descriptions and said, in effect, that if he had had anything to do with the deal he would have told Winans to go to hell, words

(Testimony of Chet L. Parker.)

to that effect. Does that bring it back to you, your discussion with Mr. Stegmann?

A. Well, it is probably unfortunate that I used this kind of language, but I remember Walt having to put the description in to agree with, I believe it was, Mr. Hines. I never met Mr. Hines, but Walt used the name.

Q. Never what?

A. I believe it was Mr. Hines, whoever the other surveyor was, for the Winans.

Q. You say you paid Walt for his work. This entry is on September 10th. Is it your testimony that you paid him on that date for the work that he had done?

A. I don't know where the check is. I gave it to him. If I could see the check——

Q. I hand you Exhibit 41, Mr. Parker. Will you look that over? Is that the check that you gave to Mr. Stegmann for [179] the work that he did in surveying the Winans' property? A. Yes.

Q. What was the date of that check?

A. 9-12-51.

Q. September 12th; and is that—does that refresh your recollection as to when the check was given, and is that date a mistake?

A. Well, it possibly could be a mistake. The date wrote in the check could be a mistake. I wrote it; consequently, it could be a mistake.

Q. You remember making out the check, do you?

A. Yes.

(Testimony of Chet L. Parker.)

Q. It is your recollection that you made it out on September 10th?

A. Well, I don't know which date I made the check out.

Q. Well, your diary says you did it on the 10th.

A. Well, I think it was the 10th, though it has a better memory than I have, certainly.

Q. Did you deliver it to him the same date that you made it?

A. Yes, I gave him this check. Well, this——

Q. You have a distinct recollection of making that check out and handing it to him on either the 10th or the 12th, whichever is the correct date?

A. I definitely gave it to him. [180]

Q. At the same time it was made out, on that same day?

A. Well, I don't say that it was the same day. I think it was.

Q. Well, do you have a reservation in your mind?      A. Well——

Q. Did you hold the check for a while before giving it to him?      A. I don't think I did.

Q. What is that?

A. No, not for any length of time.

Q. Well, now, what do you mean by any length, several days?

A. No; no, I mean, by any length of time, a day or two.

Q. Might you have held it a day before you gave it to him?      A. After it was signed?

Q. Yes.      A. No.

(Testimony of Chet L. Parker.)

Q. May I have that back, Mr. Bailiff? This check I notice is for \$382.00, and you have marked down at the bottom: "Engineering & showing Multnomah Plywood  $\frac{1}{4}$  corner, Lost Lake, in full 8-14-51 to 9-10-51."

How did you go about computing the amount of that \$382.00?

A. I asked Mr. Stegmann how much he would take to do the job for me.

Q. When did you ask him? [181]

A. Just when the first negotiations started on—when I purchased this other thing, and he was supposed to be the surveyor. He was hired to do the surveying. Then I asked him how much it was going to cost me. There was two things I wanted to know. I wanted to know who was going to do it and how much money it would cost, and I asked him at that time how much money it would cost, and that is less \$20.00 to show Mr. Kenney that day's work.

Q. Less \$20.00 what?

A. Going up that day with Mr. Kenney, showing him the corner.

Q. You mean you paid him \$20.00 more than this check?

A. No, this check included \$20.00 more than the survey came to.

Q. Then you paid him \$362.00 for all that other work, did you?

A. Well, the survey is what I paid him for.

Q. Your testimony is that you had an agreement

(Testimony of Chet L. Parker.)

with him on August 14th when the survey was arranged that you would pay him this amount?

A. Yes, we had an agreement that I would pay him so much for his putting on the survey.

Q. How much? A. Pardon me?

Q. How much? [182]

A. Well, as I remember, it would be \$362.00. I remember paying him \$20.00 for a day's work, and that would be \$20.00 less, and would be \$362.00.

Q. Well, then, he was on your payroll at \$20.00 a day from August 14th until September 10th; is that the way you arrived at it?

A. No, that has nothing to do with it whatsoever.

Q. What was your arrangement with him on August 14th?

A. I think it was August 14th, but whenever it was that he agreed to do the survey he told me how much money he would charge me to do that work, and I paid him for that.

Q. How much did he tell you he would charge you?

A. Well, it must have been \$362.00.

Q. How did you arrive at that figure?

A. Well, he arrived at the figure.

Q. How did he arrive at it?

A. I don't know how he arrived at the figure. As I remember, it was around \$500.00, the first figure he quoted me. I told him that was too much money, and that is the figure we came up with.

(Testimony of Chet L. Parker.)

Q. When he told you he would charge you \$362.00, you said that would be all right?

A. Well, I agreed to that.

Q. He did not give you any basis on which he computed \$362.00? [183]

A. No.

Q. Didn't he tell you how many days it was going to take? How many days actually did he work up there surveying?

A. I don't know how many days he worked.

Q. Didn't you say that a surveyor got about \$20.00 a day?

A. No, I did not.

Q. What did you say about that?

A. I said I paid Mr. Stegmann \$20.00 to show Mr. Kenney the corner. That didn't have anything to do with surveying. He was just to show Mr. Kenney the corner so Mr. Kenney could cruise that piece of timber. I paid him \$20.00 for it.

Q. Do you know how much you have to pay a regular surveyor per day?

A. Well, I have a lot of surveying done, and Mr. Walker generally does my surveying, and he generally does not describe it by the day. I tell him what I want done, and I pay him the money for it. I don't know what he charges per day.

Q. You have no idea what you have to pay by the day for surveying services?

A. I suppose it would depend on how badly a man wants to make some money.

Q. Well, now, I take it then that on that night of September 10th your wife informed you it had been too late to close the [184] deal that day and that

(Testimony of Chet L. Parker.)

they were going to complete it the following morning; right?

A. I think that is probably what it was.

Q. I notice the following morning that you went up to Fifteen Mile Creek. What were you doing, looking at timber up there? A. Yes.

Q. Was that timber that you thought you might buy, or were you selling it?

A. No, I was supposed to be buying from a John Marsh.

Q. John Marsh timber?

A. I was supposed to be buying it from John Marsh.

Q. Marsh? A. Marsh.

Q. That was located on Fifteen Mile Creek?

A. Yes.

Q. Did you buy the timber?

A. No, I did not.

Q. How did you learn about that timber?

A. From Mr. John Marsh.

Q. Did you talk to Marsh about it?

A. Why, certainly I talked to Marsh about it.

Q. On that day?

A. Well, I don't know—no, I don't think I did on that day.

Q. When did you talk to him, do you [185] know? A. I don't remember.

Q. Well, then, when you got back—were you gone all day on the 11th?

A. I don't remember whether I was gone all day or not, but I think I was.

(Testimony of Chet L. Parker.)

Q. When you got back did you find out from—  
by the way, I notice apparently part of this entry  
for September 11th appears as though part was  
made by you and part made by Mrs. Parker, is that  
right? A. Yes.

Q. Well, now, which part was made by you?

A. Well, I printed it, and she wrote it.

Q. What is that?

A. The printing is mine, and the writing is hers.

Q. Now, I have a typed copy. I do not know  
where one leaves off and the other starts.

A. One says, "Left Hood River to be at Abraham's office." That is the beginning of hers, and  
the last of hers is, "all Myron and Chet do is look  
at timber and bring rattlesnake rattles home."

Q. I notice on the part you made, the entry you  
made, you went to Fifteen Mile Creek, and you got  
to Hood River after dinner. Would that be at night  
or afternoon?

A. I don't know whether it was night.

Q. Do you call dinner the evening meal or the  
noon meal? [186] A. Well, I am a farm boy.

Q. Dinner to you is lunch, is that right?

A. Well, yes.

Q. So that would get you back—

A. Well, sometimes, sometimes not.

Q. What is that, sometimes, sometimes not?

A. I get it somewhat confused. My wife calls  
dinner the evening meal, and I call sometimes dinner  
at dinnertime.

Q. I notice that when you got back that after-

(Testimony of Chet L. Parker.)

noon or evening, whichever it was, you asked the title company for an owner's policy; right?

A. That is what it says.

Q. So apparently, you had ordered an owner's policy before September 11th, and they had agreed to exchange the purchaser's policy for the owner's policy; is that right? A. Yes, apparently.

Q. All right. Now, taking up the—they told you it would be ready the following day, on the 12th. Now, taking up the part written by Mrs. Parker, what does this mean: "Left Hood River to be at Abraham's office"? Didn't you stay at Hood River?

A. I can't explain her writing, sir. She wrote it.

Q. You have no idea what that meant?

A. Well, I would think that Mr. Abraham's office is at Hood River, and she says she left Hood River. I would presume [187] that she made a mistake.

Q. Well, now, is it possible that you might have stayed at The Dalles that night, and she drove over early in the morning from The Dalles to Hood River?

A. Very possible that we did, or at Vancouver, Washington.

Q. Well, do you remember where you were when you had this discussion with Mrs. Parker about her trouble in closing this transaction?

A. No, I don't remember.

Q. Do you remember where you were when Walter Stegmann told you about all the troubles in getting the proper description of the deed?

(Testimony of Chet L. Parker.)

A. It seems like it was in Hood River, but I am not sure of that, though.

Q. Now, then, you learned, at any rate, when you got back that evening on the 11th, you learned from your wife that she had received a deed, that the deed had been recorded with your name filled in as grantee, that the \$95,000 draft had been delivered; right? A. Yes.

Q. On the 12th do you recall going in to the title company to pick up your title policy?

A. I don't recall that it was on the 12th, but I recall going in to get my title policy.

Q. Do you recall at that time Mr. Miller telling you that [188] there was a defect in the title or that the Government claimed ownership of the land?

A. Pardon me a moment. It must have been after the 13th when I got the title policy because I drove to Portland to get my purchaser's policy out of the bank, so, apparently, it must have been after the 13th that I got the—that I saw Mr. Miller. I would presume it was on the 14th. Yes, in fact, I entered it here as September 14th picking it up.

Q. Yes, I think I am mistaken about the dates. Let me see if I can get myself straightened out here.

I notice on the 13th in your diary you say, "Drove to Hood River." You drove from where, from The Dalles or Vancouver?

A. I don't know where we drove from. I would gather The Dalles.

Q. Then the entry here is that you, "Drove to Portland to get purchaser's policy."

(Testimony of Chet L. Parker.)

A. In the bank.

Q. In what bank?

A. Bank of California, I think.

Q. What was it doing down there?

A. Well, I suppose I left it there.

Q. What is that?

A. Oh, it might have been at McMinville.

Q. Did you have a safe deposit box at the Bank of California [189] at that time?

A. Well, I suppose we did.

Q. Pardon?

A. I don't know whether we did. We did have a safe deposit box. We also had some dead storage or something down there, too, whatever you call it. I don't know what you call it.

Q. Well, Mr. Parker, you know now that you had a safe deposit box in the Bank of California in 1951, don't you?

A. On September 13th, 1951, I don't know that I had a safe deposit box in the Bank of California, whether I did or I did not.

Q. Well, have you ever had a safe deposit box there?

A. Well, my wife purchased it and paid for it, and I never got into the box. I don't know when she got it exactly or when she let it expire, but she took some papers, income tax records, and put them in what they called dead storage or something, I think she called it. I have never been in there either. She has taken care of that, and I certainly would

(Testimony of Chet L. Parker.)

not remember whether on 9-13-51 that I had a safety deposit box in the Bank of California.

Q. Didn't you go to the Bank of California to get this purchaser's policy?

A. I don't know whether we went to the Bank of California or McMinnville.

The Court: Or where? [190]

The Witness: McMinnville.

Q. (By Mr. Strayer): Well, your diary says you went to Portland, doesn't it? A. Yes.

Q. You are not sure whether your diary is correct or not?

A. Well, we came from The Dalles and went to Portland, and I am sure that my wife got it out of a safe deposit box at the Bank of California.

Q. You are sure your wife got the purchaser's policy out of the safe deposit box at the Bank of California? A. Yes.

Q. On the 13th of September? A. Yes.

Q. Then on the 14th I notice that you say you left Hood River at noon, "Lois and I went to the Title and Trust Company at Hood River to turn in our purchaser's policy for our owner's policy now that we have it paid for and deed recorded."

And I notice under that date that it was under that occasion that Mr. Miller told you about the Government's claim of ownership, is that right?

A. Yes.

Q. Is that the first notice you ever had that the Government made any claim to this property?

A. If that was notice, that was the first notice

(Testimony of Chet L. Parker.)

or first [191] person telling me that the Government owned this piece of property.

Q. Up until that time no one had ever made any mention to you of any claim by the Government to this property? A. No.

Q. Prior to September 14th, 1951?

A. That's right.

Q. And your first notice of that came from Mr. Miller of the Title and Trust Company?

A. Yes, I presume it was Mr. Miller. I knew him as Mr. Miller.

Q. All right. Now, I take it from that that that includes everybody. Mr. Stegmann never told you about any claim of the Government to this property? A. No.

Q. Mr. Winans has never told you about any claim of the Government to this property?

A. No, he certainly did not.

Q. Nobody else did?

A. Nobody else did.

Q. Now, did you have any understanding with Mr. Miller as to what the future course was to be, what you might do about it?

A. Understanding, I never came to an understanding. I never ever came to an understanding with Mr. Miller about anything.

Q. You were shocked, I presume, to hear that your title was in question?

A. Well, I didn't believe him, to start with. I felt [192] that it just was not so.

Q. When did you first get confirmation of it?

(Testimony of Chet L. Parker.)

A. Well, I couldn't really answer that unless it was the time that the Forest Service wrote me a letter saying that they owned it, or whatever they said.

Q. Well, then, you believed it as so when the Forest Service wrote you a letter?

A. Well, not absolutely by any means.

Q. Well, Mr. Miller told you, did he not, that the Forest Service had told him that they made claim to the property?

A. Yes, he told me that.

Q. Well, didn't you go to seek legal advice on that, then?      A. Yes, I did immediately.

Q. Immediately; whom did you see?

A. I saw Gene Marsh.

Q. On what date?

A. The next day, I believe.

Q. Or, in fact, the very same day, apparently?

A. Yes, I think I saw him——

Q. September 14th, "Drove to McMinnville to consult Gene Marsh. He said nothing to worry about as we had title policy." Is that right?

A. That's right. He told me it was ridiculous; that it could not be.

Q. What was ridiculous? [193]

A. That what Mr. Miller related to me, that it just couldn't be that the Government owned it, and these people had owned that all these years, and all that stuff.

Q. Let us go back for a moment. Just what did

(Testimony of Chet L. Parker.)

Mr. Miller tell you about this claim of the Government?

A. As I remember, he said that the Government claims the property, the 16th section, and I told him that my attorneys were Marsh & Marsh of McMinnville, and he said—he didn't indicate to me that it was the last word in it by any means, but he just told me that they told him they owned it.

Q. Did he tell you that the difficulty was because of the fact that the land had not been surveyed at the time of the admission of the state into the union?

A. I don't remember him telling me that.

Q. Then you were not able to pass that information along to Mr. Marsh when you talked to him, were you?

A. Well, I could have; I could have and I could not have. I don't remember that he told me that.

Q. All you remember telling him is that the Government claimed the land and that you had a title policy?

A. That was in my mind uppermost, that I had a piece of property that I didn't own.

Q. So what Mr. Marsh told you, in effect, was that the Government could not own it if the title company had issued a title policy; is that the idea? [194]

A. He gave me to understand more or less they didn't make any mistakes.

Q. Well, now, did you have any discussion with either Mr. Winans or Mr. Stegmann about this title difficulty?

(Testimony of Chet L. Parker.)

A. Well, I don't believe—I did with Stegmann, I think.

Q. How about Mr. Winans?

A. Well, maybe later, considerably later, but not anything concerning clearing it up or anything. That was after we got into a lawsuit, I think.

Q. According to your diary, on the 16th of September Mr. Winans had called or was trying to get in touch with you by telephone. Do you recall that?

A. Well, it seemed like when he was trying to get in touch with me my wife was there, and I came in later, but I am not sure about that, but I remember him, I remember him—remember of my calling in answer to his call. I distinctly remember that.

Q. But you do not recall having a talk with him?

A. Well, it seemed like the connection was poor, and he wanted to see me in a day or two.

Q. I notice on the 17th that you showed the property to a representative of the Vancouver Plywood, Mr. Olsen of the Vancouver Plywood, and took him out to show him the Lost Lake property. Was that as a prospective purchaser, or had your Multnomah Plywood deal fallen through by that date? [195]

A. They were so darn slow to deal that I was not going to mess with them.

Q. Had you told Multnomah Plywood about your title troubles?

A. I think I had, but I am not sure. In fact, I am very sure that I did.

(Testimony of Chet L. Parker.)

Q. Did you tell Vancouver Plywood, Mr. Olsen, did you tell him about the title trouble?

A. I told Mr. Olsen I wasn't sure I could give title to it.

Q. Did you tell him what the trouble was?

A. No, because I did not know myself.

Q. I notice on September 18th, according to your diary, you took out Mr. Patrick of Patrick Lumber Company, showed him the Lost Lake property, and he was impressed. Was he also a prospective purchaser?

A. Well, Mr. Crom really was. Mr. Patrick was with Mr. Crom, and Mr. Crom wanted to purchase another piece from him, and he had contacted apparently Mr. Patrick, and I took him up there.

Q. Was that the prospective purchaser?

A. Mr. Crom, yes, only I don't know whether that is the proper pronunciation or C-r-o-n, I think it is.

Q. Did you discuss this title problem with them?

A. I did with Mr. Crom.

Q. To some extent you did. You didn't know whether you could furnish good title? [196]

A. That's right.

Q. I notice on September 19th, according to your diary, you went to McMinnville and saw Mr. Marsh, "No satisfaction," and also saw Stegmann. Did you give Mr. Marsh any more details about the title trouble at that time?

A. Well, I didn't know much about titles or troubles. I certainly couldn't have given him much

(Testimony of Chet L. Parker.)

information, and I think he was supposed to find out the information for me or for himself and relay it to me and see how serious it was, as I remember it. That is the reason I went back on the 19th.

Q. I notice on September 20th, according to your diary, the Title and Trust people were down to see you, and also your diary indicates that Stegmann was there that night. Did you discuss with Mr. Stegmann these title difficulties that night?

A. Yes.

Q. Did he tell you that he had known anything about that before?

A. Well, I was kind of abusive to him.

Q. What is that?

A. I was kind of abusive to him. I didn't give him much time to tell me anything. I was a little angry about it.

Q. Did Mr. Stegmann ever tell you when he first learned of this claim of the Government?

A. No, I don't think—I don't know whether he did or didn't. [197]

Q. Never had that you can remember?

A. Not to my knowledge.

The Court: Why did you get angry then at Mr. Stegmann on the particular night if you didn't think that Mr. Stegmann knew anything about the defect in the title?

The Witness: I didn't know whether he did or didn't know, and I was sure—here I get a piece of

(Testimony of Chet L. Parker.)

property, and I run into a deal with him and Winans, and I was real mad about it.

Q. (By Mr. Strayer): Well, now, was that on that night of September 20th or at some prior time that Mr. Stegmann gave you back the check for \$25,000?

A. Well, whenever he gave it back, it was after this time. I don't know when he gave it back. Whenever he gave it back it is on the check because I immediately took it down and deposited it.

Q. You deposited it on the same day that he gave it to you?

A. I don't know whether it was the same day, but right away.

Q. Well, the check, I think, indicates that it was deposited or cashed and the money deposited in your account at the McMinnville bank on September 20th.

Now, is it your testimony, then, that Stegmann returned it to you on that date?

A. Well, or should have returned it to me, yes, on that date, [198] as I remember.

Q. Was it on that date, or was it some other date?

A. Well, I don't know that it was exactly on the 19th and the 20th of '51.

Q. It could have been the day before?

A. Very possibly.

Q. Could it have been several days before?

A. Well, it wasn't long before. I know that.

Q. Well, was it several days?           A. No.

(Testimony of Chet L. Parker.)

Q. Could it have been two days?

A. It is possible, but I don't think so.

Q. It could not have been longer than two days?

A. Well, I think he gave it to my wife instead of to myself, anyway.

Q. Oh, he didn't even give it to you; he gave it to Mrs. Parker?

A. I think he gave it to Mrs. Parker.

Q. When did you first know that Mrs. Parker had it back?

A. Well, probably as soon as she got it, but I don't remember what date it was. It has been a year and a half ago. I can't remember what is the date she got it back.

Q. How did you find out about it?

A. Pardon?

Q. How did you find that it had been returned?

A. Well, she told me, I think, as I remember. Now, I am not [199] sure that he gave the check back to her or gave it back to me, but I know it was not very long we had the check when we put it into the bank.

Q. Who put it into the bank, you or Mrs. Parker?

A. I don't remember.

Q. You have no collection of that?

A. I think she did, but I am not sure.

Q. Well, do you ever remember talking with Mr. Stegmann about the return of the check?

A. Yes.

Q. When was that, at the time the check was returned?

A. Well, I think it probably was.

(Testimony of Chet L. Parker.)

Q. What is your best memory on it?

A. Of the conversation?

Q. Yes.

A. Well, I was kind of angry about this deal that here I—I was afraid, I told him if he attempted to cash that check I would have stopped payment on it.

Q. Why was that, because you were sore over this failure of title? A. I certainly was.

Q. When did you tell Mr. Stegmann that?

A. Well, I think it was on the day that I got the check back.

Q. It was not some earlier date?

A. No, I don't think it was.

Q. How did you know that the check had not already been [200] cashed?

A. Well, I was pretty well informed on that. Some of the bank officials told me that Mr. Stegmann had—well, I can't quite quote them exactly, but it was, in effect, that the sheriff was over today about an account or something on some deal and that—and I checked on the check to see whether it was cashed or not.

Q. Let's see if I get that straight. Someone in the bank told you that the sheriff had been over trying to attach Stegmann's bank account; is that right?

A. Well, something to do with the bank account, however they do it.

Q. Anyhow, the sheriff was looking for money or assets belonging to Stegmann; is that the idea?

(Testimony of Chet L. Parker.)

A. I suppose it was money. I gathered it was money.

Q. Because of that you felt sure that Stegmann had not cashed the check?

A. Well, I figured he had not, and I inquired.

Q. So when you saw Stegmann around the 20th or maybe a day or so before the 20th you then told him that there had been a failure of the title, and you were pretty sore about it, and if he tried to cash the check you would stop payment on it, is that right?

A. If he didn't give it back to me, why, I would stop payment on it. [201]

Q. Oh, if he didn't give it back to you, you would stop payment?

A. Yes.

Q. What did Stegmann say?

A. Well, he gave it back to me. I don't remember what he said.

Q. Did he endorse it at that time, or was it already endorsed?

A. No, I think he endorsed it then.

Q. You had no further discussion with Stegmann about it?

A. We possibly could have, but nothing I remember about.

Q. So then what is your recollection about what you did over at the bank on the check?

A. Pardon me?

Q. What is your recollection about what you did with the check after it was endorsed back to you?

(Testimony of Chet L. Parker.)

A. I think my wife took it to the bank and deposited it.

Q. You think that your wife took it?

A. Yes, I think she did.

Q. Did you tell her what to do with it?

A. I don't believe I did.

Q. Why did you deposit the check? Why didn't you just tear it up?

A. Well, something about her income tax. She had that figured out. It would show then as a matter of record that [202] it was set out on her income tax deal from one account to the other. We had two accounts at that time.

Q. This check was drawn on your personal account, was it?

A. I don't know how—she took care of the banking arrangements. I don't remember which one it was drawn on.

Q. There was some idea that the check ought to go through a bank and ought to have a bank endorsement showing it had been cashed for income tax purposes?

A. Yes, that is what I had in mind, or she had in mind, rather, apparently. I don't know. That is what she had in mind. She didn't exactly tell me, but I am positive that is what it was.

Q. Was it purely a coincidence that the check was redeposited in your account on the same day of the first meeting of the Title and Trust people in Mr. Marsh's office?

A. Was it purely coincidence?

(Testimony of Chet L. Parker.)

Q. Yes.

A. Well, I had nothing to do with the meeting with Title and Trust.

Q. Well, was it a coincidence that it happened on the same day?

A. Well, it certainly would have to be.

Q. You knew, did you not, Mr. Parker, that in making a claim on that insurance policy you would have to furnish proof of how much you paid for the property? [203]

A. What I knew about title insurance at that time you could write on a postage stamp.

Q. Is it your answer that you did not know it at that time?

A. I did not know anything about collecting from any title company. I didn't know anything about it whatsoever.

Q. You knew that Mr. Marsh was meeting on the 20th with the Title and Trust people, did you not?

A. I don't know when he was meeting on the 20th. When I was there, I knew he was having a meeting.

Q. Your diary says he was there on the 20th.

A. Well, they were down to see him, the Title and Trust Company, on the 20th. I say that here.

Q. Did not Mr. Marsh advise you that you would have to get the check for evidence of what you paid in order to prove your loss to the title company?

A. I don't remember him saying anything like that.

Q. You don't remember anything about that?

(Testimony of Chet L. Parker.)

A. No. In fact, I don't think he was very well—knew what he ought to do to get anything with it.

Q. You never talked with the title company or any of its representatives regarding this matter until after September 20th; right?

A. Other than Mr. Miller.

Q. Were you in Mr. Marsh's office on the 20th when the title people were there?

A. Well, I say so here. [204]

Q. I think you are right. "They were down to see Frank Marsh and myself and Gene was absent." Did they not ask on that day that you submit some evidence of how much you paid for the property?

A. Not that I remember.

Q. Didn't they ask you on that day how much you had paid for the property?

A. They might have.

Q. Didn't you tell them that you had paid \$125,000 for it?

A. I don't remember telling them that.

Q. Was not that always your position in your negotiations with the title company up until about the time that this lawsuit was filed?

A. No, they knew they had all the figures on it because they took—I paid them to photostat in their own office some of the documents that we gave them. They had all the data, whatever it was. They knew what we paid for it.

Q. Did you ever tell them that you got this \$25,000 check back from Mr. Stegmann?

A. I don't know whether I did or didn't.

(Testimony of Chet L. Parker.)

Q. Did you tell the title company people that you had paid \$25,000 for the option to Mr. Stegmann?

A. Yes, I think I told them I paid \$25,000 for the option.

Q. Yes, and you have never up until this afternoon—is the first time that you have ever said that that check was given [205] back to you because title had failed?

A. No, I won't say this was the only time.

Q. Had you ever told any of the Title and Trust people before?

A. I don't know whether I did or I don't know whether I didn't.

Q. You never testified to that in your deposition, did you?      A. Well, I don't remember.

Mr. Strayer: I am about to get into a new subject.

Mr. Jaureguy: He testified all about that transaction when the \$25,000 check was delivered to him in his deposition.

Mr. Strayer: I think that is true, but do you contend, Mr. Jaureguy, that he ever told the story that the check was returned because the title was no good and because he had threatened to stop payment on the check? I have never heard that story until today, and I have read the deposition through.

Mr. Lindsay: I was present at the deposition, and I never heard that story.

The Court: Well, you can impeach him by his

(Testimony of Chet L. Parker.)

deposition if you want to. It is 5:15 now, and if you are going to get into a new subject perhaps we had better adjourn unless you can finish that subject in 15 minutes.

(Discussion off the record.)

The Court: We will recess until 9:15 tomorrow morning.

(Thereupon the trial of the above matter was recessed until Wednesday, January 21, 1953, at 9:15 a.m.) [206]

Wednesday, January 21, 1953, 9:15 A.M.

(Court reconvened, pursuant to adjournment.)

**CHET L. PARKER**

was thereupon recalled as a witness in behalf of the Plaintiff and Third-Party Plaintiff and, having been previously duly sworn, was further examined and testified as follows:

**Direct Examination**

(Continued)

By Mr. Strayer:

Mr. Strayer: I wonder if we can get the original deposition of Mr. Parker.

The Court: Has the original deposition been marked as a pre-trial exhibit?

Mr. Buell: Yes, it has.

(Discussion between Court and counsel off the record.)

(Testimony of Chet L. Parker.)

Mr. Strayer: Unless there is some objection, we can go ahead with a copy, your Honor.

The Court: Yes.

Q. (By Mr. Strayer): Mr. Parker, I want to ask you some questions about the testimony which you gave on your deposition on August 7, 1952. In reading over your deposition last night, I am somewhat uncertain as to your testimony as to where you lived. I had understood yesterday that you lived in Vancouver at the time that this Winans transaction [207] took place, but if you will look on page 66 of your deposition your testimony seems to be you had lived at McMinnville at that time. Will you read over page 66 and give me, to the best of your recollection, where you did live at that time?

(Witness consults exhibit.)

A. I have read it.

Q. I think later on in another place in your deposition, Mr. Parker—I do not have the page handy, but I believe you referred to your residence then in Vancouver at that same particular time. Are you able to straighten out the discrepancy?

A. I owned a house in McMinnville and stayed down there sometimes.

Q. That was at the same time that your home was in Vancouver, but you had a house also at McMinnville; is that what you mean to say?

A. Yes.

(Testimony of Chet L. Parker.)

Q. How long had you owned that house at Mc-Minnville, or do you still own it?

A. I do not own it now. I think I owned it for two or three years.

Q. If you will refer to pages 90 and 91 of your deposition, Mr. Parker, down at the bottom of the page on page 90 and running over onto page 91, I would like to clear up, if we can, to the best of your recollection, just when this title [208] report was ordered. I note your testimony at the bottom of page 90:

“Q. Did you order the original title report before you went up on August 13th to look at the property?

“A. I don’t know when I ordered that title report. It was just a few days before I picked it up.

“Q. The events of that day are not clear enough in your mind that you can state whether or not you went in to the Title and Trust Company’s office in Hood River before you went up——

“A. No, I didn’t go in before.

“Q. Did you go in when you came back down?

“A. No, it was too late to go in.

“Q. Then is it your testimony that you didn’t go in there on Monday, August 13th?

“A. That is right.”

Now, I believe in your correction which you filed after the deposition was taken, I believe you made a correction that you had gone in there on the 13th, is that right?

Mr. Jaureguy: Yes.

(Testimony of Chet L. Parker.)

Q. (By Mr. Strayer): Apparently, at the time the deposition was taken, you were under the impression that you had not ordered a title report on August 13th, is that correct?

A. Apparently, yes. It was very hazy in my mind. [209]

Q. To what source did you go to verify the dates in order to make the correction?

A. Well I referred back to the diary and the occurrence of events and by having a half an hour, you might say, to recollect and reconstruct it as to my diary, why, I calculated it was probably on the 13th.

Q. Was there anything in the diary that indicated that it was the 13th?

A. I don't remember, but I believe so.

Q. In view of the fact that you state in your deposition that you did not go in the title company before you went up to Lost Lake and your testimony that it was too late to have done so when you came down from the lake, what is your best recollection now as to when you might have gone in the title company?

A. Well, I am still—I am sure I went in on the 13th and I believe it was in the morning of the 13th, but I am not sure about it. I am confused as to the time my wife and I went up to look at it and—on the 13th. It was a few days elapsed between the two times.

Q. All right. Now, if you will refer to page 72 and I believe also on 76 with reference to the time

(Testimony of Chet L. Parker.)

you spent up at the lake that day, I notice on page 72 your testimony:

“Q. Could you give us any estimate in hours that you were up there on the property? [210]

“A. No, I couldn't. I spent a day there, a big, long day.”

Then on page 76 with reference to the time that you returned to Hood River:

“Q. About what time of day?

“A. Well, we had an agreement made when we was to meet, but I forget. It was late evening.”

You will notice that you met your wife at the Apple Blossom Cafe, apparently, instead of at the library. Does that refresh your memory? I assume this matter was fresher in your memory at the time of the deposition than it is now. Does that refresh your memory as to the time that you arrived back in Hood River on that day?

A. No, I was to meet late evening at Mr. Stegmann's at The Dalles.

Q. Your testimony that you spent a good, long day up on the property, how does that agree with your present recollection?

A. Well, I think that was a later day when my wife and I was up there.

Q. You think now, then, that you were mistaken at the time of the deposition on the length of time that you spent on the property? [211]

A. I think I was mistaken as to the time I was thinking about when I spent a long day on the property.

(Testimony of Chet L. Parker.)

Q. Do you think now that you were mistaken in your deposition when you said that you arrived in Hood River late in the evening?

A. Yes, I didn't say I arrived at Hood River late in the evening. We had an agreement to meet.

Q. You met your wife later in the evening?

A. Why, yes.

Q. Well, didn't you meet your wife as soon as you got back to Hood River?

A. That I don't remember for sure. I think I had a correction on that, did I not?

Q. A what?

A. Didn't I have a correction on that, or did I?

Q. I do not have it.

Mr. Jaureguy: No correction on that.

Q. (By Mr. Strayer): All right. Now, if you will refer to page 21 and to 41 of the deposition with reference to your—I believe this refers to your talk with Mr. Winans on the 18th of August and particularly your testimony with reference to discussions with Paul Winans on title insurance:

“Q. But the first time this discussion of title insurance came up between you and Paul Winans was that particular evening? [212]            A. Yes.

“Q. That is when you asked him to furnish title insurance?

“A. I asked him, yes, what he was going to do for the title. He told me——

“Q. And it was after that when he refused to do anything, you decided you had better do it yourself?

(Testimony of Chet L. Parker.)

“A. That is right. I told him I didn’t want an abstract on it; I would have to go buy some title insurance, then. He told me it was the Hood River office, the title insurance.

“Q. So then after that you decided to get some title insurance and to go and do it on your own?

“A. I decided to get a title report first, to see that he owned it or someone owned it that was trying to work the deal. Then I decided, after talking to the attorney, that I could purchase title insurance. Up to then I didn’t even know I could purchase title insurance.”

Q. Do you remember having given that testimony, Mr. Parker?           A. Yes.

Q. Am I correct in my interpretation? Apparently, when you gave your deposition, you were then under the impression that you had not yet ordered a title report at the time that you [213] talked with Paul Winans?

A. Well, I knew I had ordered a title report. I was a little confused no doubt, between the purchaser’s policy and the title report.

Q. You did on that occasion ask Mr. Winans to furnish you with title insurance, did you?

A. Yes, and he indicated—well, he said he would give me an abstract. I told him I would rather have title insurance, and he indicated to me that if I want title insurance I would pay for it, he wouldn’t; that any of his instruments, they call for payment of any title insurance.

(Testimony of Chet L. Parker.)

Q. You were willing to pay for the title insurance?      A. Well——

Q. Well, you told Winans you were?

A. Well, I was forced to then from then on.

Q. What is that?

A. If I was going to get any, he told me I would have to pay for it.

Q. Did you tell him you would pay for it?

A. Yes I believe I told him I would pay for the additional amount. He had an \$8,000 policy to turn in on it. I would pay for the additional amount.

Q. You told him you would pay additional, which meant that Mr. Winans would not be out anything for title insurance; is that it? [214]

A. That's right.

Q. Well, then, you really had no problem of getting title insurance, a title insurance policy, as long as you were willing to pay for it, did you?

A. Yes, I had a problem. I didn't even know I could get a purchaser's policy until I had it in my name.

Q. Why were you interested in a purchaser's policy?

A. Because when I buy property I like to have a good deed for it so it can be recorded, and then I can order an abstract or I have a policy of title insurance.

Q. How do you ordinarily, or how had you ordinarily handled that when you bought a piece of property and got title insurance?

(Testimony of Chet L. Parker.)

A. Ordinarily you get a deed for it and you purchase title insurance on it.

Q. Ordinarily the seller gives you title insurance, does he not? A. Not always.

Q. I did not say always, but hadn't that been your usual experience in the past?

A. Generally, it seemed like I have—they sometimes make me split the amount they pay for it. I pay a part of it.

Q. You had never before run into any problem in getting title insurance to protect yourself when you bought a piece of property, had you? [215]

A. No, but this was different in respect of an option.

Q. In what respect was the difference? You were exercising the option, were you not?

A. Yes, but then it was not a matter of record that I was an owner of any kind, and I didn't know that you could purchase a purchaser's policy of insurance before you could indicate you was the owner of the property.

Q. Were you concerned with protecting yourself during that period from August 18th until the deed was delivered? Was that the period you were interested in?

A. Well, I would like to have some title insurance, but I was not aware that I could purchase it.

Q. Was it that period that you were worried about?

A. Well I would think so. I was going to sell

(Testimony of Chet L. Parker.)

Multnomah Plywood, and they would want title insurance policy.

Q. Did Mr. Winans make any representation to you as to what title he had?

A. He had a title insurance policy on it.

Q. I know, but what did he say about the title itself?

A. Well, I don't remember. It seemed like the option, I think, called for a good deed, and I think there was a little discussion on that.

Q. You do not remember Mr. Winans making any representation as to what kind of title he had, do you?

A. Well, he had title insurance on it. I don't know what; [216] I don't know what—when you say title insurance, I don't know what you mean by title.

Q. I mean did he claim to be the owner of the property?

A. That assignment indicated to me he was the owner of the property.

Q. That was not the question, though. Did Mr. Winans make any statement to you as to who owned the property?

A. Well I think he did, but I am not real sure.

Q. What is your best recollection as to what he did say about it?

A. Well, there was a discussion concerning the title policy, who was going to pay for it and that he had—that there was a title policy now in existence on it of the total amount of \$8,000, as I remember.

(Testimony of Chet L. Parker.)

Q. Is that all you remember him saying?

A. Yes, as I remember, there was discussion about the title in which he made the statement that he was the owner of these properties.

Q. Did he make the statement that the Winans family were the owners?

A. I couldn't say definitely that he did.

Q. Did he, by any chance, tell you that there was a dispute between the Winans family and the Government as to who owned the 40 acres?

A. No.

Q. He said nothing about that? [217]

A. That's right.

The Court: What day is this you are talking about?

Mr. Strayer: I am talking about the 18th of August, your Honor.

The Court: 18th of August?

Mr. Strayer: The first meeting between the Winans and Mr. Parker.

Q. I refer you to page 60 of your deposition, Mr. Parker, and this testimony again refers to your meeting on August 18th.

“Q. Was anything said at that time by Mr. Winans about there being any question about the title?

“A. Question about the title? You mean the title not being any good?

“Q. Yes.

“A. No, nothing mentioned at that time about any title not being good. In fact, just the reverse

(Testimony of Chet L. Parker.)

was told me; that it had a very excellent title, he had title insurance, and he could get me an abstract both.”

Q. Do you recall giving that testimony?

A. Yes.

Q. Well, is that true?

A. Well, he told me he had title insurance like I have said here. [218]

Q. Did he tell you he had a very excellent title?

A. Well, he indicated to me that he had a good title and had title insurance. To me that was a good title.

Q. Did he say as you say he did here, that he had a very excellent title?

A. Well, he said the title was good on it, he had title insurance.

Q. He said the title was excellent?

A. I don't know whether he used that word or not.

Q. What did he say, to the best of your recollection?

A. Well, there was a good title on it, he had a title insurance policy and looked for it.

Q. If you will refer to page 241 of the testimony again, referring back to this matter of obtaining title insurance policy, down about the middle of the page, referring to your conversation again on the 18th, you state:

“Well I told him then I would get title insurance on it on the 18th, and then if he would only give me

(Testimony of Chet L. Parker.)

a figure I would buy the title insurance on it. I told him that."

I would like to know what you mean by the statement: "if he would only give me the figure."

A. Well, if he would give me that title insurance policy, if I knew it was for \$8,000. That is the figure I want him to give me, whether it was \$4,000, \$5,000, or eight that he [219] had, that would be the figure he would turn it in for or I would get that allowable amount on the policy if and when I purchased it.

Q. In other words, then, the conversation was something like this: He had refused to give you title insurance, but he told you that he had a policy. You said, "if you will give me the amount of that policy so I get credit for it, I will buy additional insurance."

A. I would buy a title insurance policy.

Q. And the figure you wanted was the amount of the present policy?

A. I wanted it to be shown.

Q. That is why he went to look for the old policy?

A. That's right.

Q. You were aware of the fact, then, on that date, were you, Mr. Parker, that where there was an existing insurance policy on property that you could get credit for that on a reissue basis on a new policy?

A. Yes.

Q. How had you learned that?

A. I learned that, well, I presumed that. I actually didn't know that, but when the girl pulled out the file the first time at the title company office I re-

(Testimony of Chet L. Parker.)

member seeing a policy of \$8,000, as I remember, on it.

Q. Did the girl tell you that you would be entitled to credit [220] on that \$8,000?

A. At that time I don't know whether she did or not.

Q. At any rate, you knew from your talk with the girl that there was a policy of \$8,000?

A. Well, more or less, yes.

Q. So you already had the figure?

A. Well, I had the figure, but I wanted to be sure about the figure.

Q. Were you aware, also, Mr. Parker, that under the practice of title companies, you could get that credit even though the former policy may have been with a different company?

A. No, I am not aware of that. In fact, I didn't even—I just, I didn't think so at all. I thought that was not true.

Q. You did not realize that the former policy was with a different company?

A. No, not—I don't believe so. I don't think anyone told me it was.

Q. If you will refer to page 225 of your deposition which refers to a conversation with the title company at the time that you first talked with them in Hood River—I believe this is your conversation with Miss Vose who testified yesterday—I think on the preceding page at the bottom of page 224 you will notice this question:

(Testimony of Chet L. Parker.)

“When do you first find out how much that [221] option is for?

“A. How much the option is for? When I read the option.

“Q. When you read it that evening?

“A. Well, I believe so. As I remember, I did. I think I read it that evening.”

The Court: You are not reading 224. We cannot find it.

Mr. Jaureguy: It starts at the very bottom of 224.

Mr. Strayer: Last sentence on page 224.

Q. When did you first—do you find it, Mr. Parker?      A. Yes.

Q. “Q. When did you first find out how much the option was for?

“A. How much the option is for? When I read the option.

“Q. When you read it that evening?

“A. Well, I believe so. As I remember, I did. I think I read it that evening.”

Now, preliminarily, Mr. Parker, let me ask you if it is not a fact that at the time the deposition was taken you were then under the impression that you had not seen the option nor learned the amount of the purchase price that Mr. Winans was asking until you saw Mr. Stegmann at [222] The Dalles that evening?

A. Well, I am doubtful about it in my deposition here.

Q. Later on, after you read the deposition, one of

(Testimony of Chet L. Parker.)

the corrections that you made was that you thought you had seen the option the day before at McMinnville when you talked with Mr. Stegmann; is that your recollection?      A. As I remember, yes.

Q. Yes, all the way through until you made that correction, all the way through your deposition your impression at that time was that when you looked at the property in Hood River you did not even know what price Mr. Stegmann had in his option, and you did not know that until you arrived at The Dalles that evening; is that correct?

A. I don't know whether it was impression; just lack of memory, I would say, because I had been very doubtful about it here.

Q. That was your testimony, was it not, Mr. Parker, that you did not know that until you got to The Dalles that evening?

A. No. I was not sure about it, and I said in here, I remember I did. I think I read it that evening.

Q. All right. Let us go on:

“Q. That is the first time you found out how much Winans wanted for this property?

“A. From Mr. Stegmann, yes.” [223]

You made a correction there after the deposition was taken.

“Q. Yes.

“A. How much he is going to charge Mr. Stegmann.

“Q. Correct. That figure, however, had not en-

(Testimony of Chet L. Parker.)

tered into your calculations at all in figuring out what that property was worth?

“A. None whatsoever. I didn’t even know that it was worth \$50,000.”

Q. Do you remember giving that testimony?

A. Yes, I remember giving it.

Q. Is that correct; before you looked at the property you did not even know whether it was worth \$50,000?

A. Before I looked at the property I wouldn’t know exactly how much it was worth.

Q. All right. Now, if you will refer to page 86 of your deposition—will you refer to the bottom of page 85, the last question:

“Q. When did you first attempt to break down the value as to the timber on each of the two tracts?”

A. Pardon me?

Q. Bottom of page 85.                      A. Oh.

Q. Then at the top of page 86: [224]

“Sometime previous to the time that I asked for a title report on it, as I remember.”

Do you remember giving that testimony?

A. Yes.

Q. That was not correct, was it?

A. No; well, as I remember, it was—I was taking a deposition and, as I remember it at the time I took the deposition.

Mr. Lindsay: What page are you on?

Mr. Strayer: Page 86, at the top.

Q. That was in error, was it not, however, Mr. Parker? You had ordered a title report before you

(Testimony of Chet L. Parker.)

ever made any attempt to segregate the values on the two tracts?      A. Yes; apparently, yes.

Q. As I understood your testimony yesterday, your explanation of why you segregated the values on the two tracts was for tax reasons in connection with a trust that you were thinking of setting up for your boy. If you will refer to page 223 of your deposition at the top of the page—I think we will have to go back to the bottom of page 222 to get the substance.

“Q. Perhaps my question wasn’t too clear. I notice in the assignment you have Lot 1, 25.88 acres, and the back 40 valued separately.

“A. Yes.” [225]

A. Pardon me. I don’t seem to find that on page 222.

Mr. Strayer: Bottom of page 222.

A. Oh, 222; I am sorry.

Q. At the top of page 223:

“Q. Why would you do that rather than just to value the entire tract?

“A. Because, as I say, of the different logging cost. One had one logging cost and the other one I couldn’t reach with the high-lead machine.”

Q. Do you remember giving that testimony?

A. Yes.

Q. Well, now, will you clarify what you are talking about? You were taking an assignment on two separate tracts of property, one 40-acre tract and one 14-acre tract, and in the assignment you went to the trouble to spell out the separate price, separate value

(Testimony of Chet L. Parker.)

on each of those two tracts. Now, what would logging costs have to do with the necessity of doing that?

A. Well, the tax purposes. Possibly we would log the back portion with the high-lead machine and could not reach the front lot. Then we would have the front lot left and then what value it would be in connection with the capital gains and all those things is what I had in mind. I could log profitably the 40 acres with a high-lead machine, and I [226] could log it across the 40-acre tract, but I could not reach down clear to the lake and across the 40-acre piece profitably, and I possibly would have that left in there. Then for capital gains and holding, and so forth, trust my son would have that, and he would want a value on it.

Q. Were you thinking in terms possibly of holding 14 acres in trust for your son and logging 40 yourself?

A. I was going to put it all in trust for the boy.

Q. Then log some of it on his behalf?

A. Yes, possibly we would log the back portion or sell the back portion or all of it.

Q. When you are talking about the back portion, are you talking about the 40-acre tract?

A. Yes.

Q. You refer to that as the back 40?

A. Well, yes.

Q. I will leave that subject for a moment. Will you give the witness Exhibit 49. That is your income tax return for 1951, is it not, Mr. Parker?

(Testimony of Chet L. Parker.)

A. Yes.

Q. Who prepared your income tax return?

A. I think it was Mr. Rich at Salem, Oregon.

Q. He is an accountant, Lawrence Rich?

A. Yes.

Q. Does he do your accounting work? [227]

A. Most of the time, yes.

Q. Pardon? A. Most of the time.

Q. Well, now, what information did you furnish to Mr. Rich in making out your income tax return?

A. Well, I didn't furnish him any. I think my wife furnished him the information.

Q. What did she furnish him?

A. That I don't know, what she furnished him. She takes care of all the tax business.

Q. Who furnished him with the explanation of the loss claimed on this Lost Lake property?

A. I think possibly she did.

Q. You have no recollection of talking to Mr. Rich about it yourself? A. Oh, I might have.

Q. Do you remember whether you did?

A. I don't remember whether I did or didn't.

Q. I call your attention to this language in your income tax return, and this is, on the sheet relating to the loss on the lake property. Do you have that page before you?

A. "Loss on Worthlessness of Property, 1951."

Q. Referring to the last sentence in the third paragraph: "For the purpose of title insurance the taxpayers estimated valuation of the two tracts as follows: 40 A tract—72 per [228] cent of Total Cost,

(Testimony of Chet L. Parker.)

14 A tract—28 per cent of Total Cost,” now, is that intended to imply that the separate values were placed on these tracts for the purpose of title insurance?      A. I didn’t write the letter.

Q. You do not know what it means?

A. I don’t know what intent the writer had specifically in saying that or not saying it.

Q. Did you tell Mr. Rich that a separate valuation of the two tracts was done for the purpose of getting title insurance?

A. No, I don’t think so.

Q. I will refer you to page 93 of your deposition, referring to the reason why you had Mr. Stegmann exercise the option rather than doing so yourself. Do you find the place, Mr. Parker?      A. Yes.

“Q. What reason was there for him to make the second payment?

“A. I had a reason for that. I wanted him to complete it up to that point, to the amount of \$5,000 paid.

“Q. Why?

“A. Before I took over. I thought it was more businesslike.

“Q. In what respect did you think it was more businesslike? [229]

“A. Well, it seemed to be the place for me to cut it off, for me to take over and for him to quit.”

Q. Do you remember giving that testimony?

A. Yes

Q. How does that reconcile with your testimony

(Testimony of Chet L. Parker.)

yesterday that you thought that the option was not assignable?

A. Well, that is where he would cut it off, and from then on it would be okeh.

Q. Is that what you meant to imply in your testimony here, that it was more businesslike to do it the way you did?

A. Well, yes; otherwise, I was a little perturbed about the assignability of that assignment—or option, rather.

Q. If you will look over on page 222 of your deposition, and this testimony, I believe, relates to the conversation with your wife the day that the deed was delivered finally executed. I believe you testified yesterday that you thought your wife had brought a draft of the deed and you had gone over it with her. I refer you to your testimony about the middle of page 122.

A. Pardon me. As I remember my testimony yesterday, that she had brought home some notes referring to reserved area or something.

Q. Well, I understood you to testify—pardon me. You [230] cannot answer what I understood; but didn't you testify yesterday that your wife brought home the draft of the deed, and you looked it over?

A. Well, I think I was a little doubtful about that.

Q. At any rate, I will call your attention to your testimony on page 122:

(Testimony of Chet L. Parker.)

“Q. Did you ever see any draft of the deed before the deed was actually delivered?

“A. No. I never did see any draft of the deed before it was delivered, before it was delivered to me or before my wife finally gave it to me.”

Q. Does that conform to your present recollection?

A. As I remember, a complete draft, the whole thing, and as was finally given to us, I don't remember of seeing the draft.

Q. Do you remember seeing a partial draft?

A. Well, I don't remember one way or the other.

Q. What.

A. I don't remember one way or the other.

Q. If you will refer to page 96 of your deposition, and this relates again back to the meeting that you testified to on August 18th with Mr. Stegmann and Mr. Winans, about two-thirds of the way down the page on 96 is this testimony:

“Q. When you went up to the Winans place there did [231] you expect to see Stegmann up there, also?

“A. Not right then, no. I expected that he would have been there that day.

“Q. Why?

“A. Because that was the day the thing was to be signed.”

Q. Do you recall giving that testimony?

A. Yes.

Q. Well, then, you did not have any pre-arranged meeting with Winans and Stegmann?

(Testimony of Chet L. Parker.)

A. I think I did have.

Q. You testified yesterday, did you not, that you had an agreement with Mr. Stegmann that you would go with him to make the \$4,000 payment?

A. I would go with him?

Q. That you would go with him, yes.

A. I don't remember making a statement that I would actually go with him.

Q. Doesn't your diary say, Mr. Parker, that under the heading of August 17th: "Seen W. Stegmann and he wants me to go with him to pay Winans so I will know they are paid the other \$4,000. I said I would."

Didn't you testify yesterday that that was correct? [232]

A. I actually didn't go with him. He was there, and I.

Q. Let us not quibble about whether you went in the same car or not. I am merely trying to find out, didn't you testify yesterday that you agreed that you would meet at Mr. Winans' place after?

A. As I remember my testimony yesterday, we had previously agreed that we would—that that day would be the day of the signing of this thing, and Stegmann completing his arrangements with it, and that I would be up there sometime that day.

Q. On the 18th of August? A. Yes.

Q. That agreement was made on the 17th of August?

A. Well, I don't remember exactly when it was made.

Q. Your diary says it was on the 17th.

(Testimony of Chet L. Parker.)

A. Well, I presume the diary is pretty correct.

Q. You would assume your diary is correct. Well, then, your testimony in your deposition: "Didn't you expect to see Stegmann up there, also"? Answer: "Not right then," and your subsequent testimony that you expected that he would have been there because that was the last day, the day that thing was to be signed, was not entirely accurate, was it?

A. Well, yes—I didn't—he could have signed the thing and left the check and would leave before I got there. He [233] could have.

Q. If you will refer to page 57 of your deposition—let me ask you first. Your testimony yesterday, as I recall, was that you did not think that you talked with Mr. Winans concerning this meeting before you went up; am I correct on that?

A. Pardon?

Q. Did you testify yesterday that you did not believe you had any telephone conversation with Mr. Winans before you went up there?

A. Well, I am not sure whether I did or not. I am thinking maybe I did.

Q. I will refer you to your testimony on page 57. Will you read that over and then state whether, according to your best recollection, you did have a telephone conversation with Mr. Winans before you went up on the 18th of August.

(Witness consults deposition.)

A. What was the question again, please?

(Testimony of Chet L. Parker.)

Q. My question is now, is it your best recollection that you did talk with Mr. Winans on the telephone before you went up there on August 18th?

A. Well, it is purely from memory, and I think I did.

Q. That was your testimony on the deposition also, was it not? [234]

A. Well, it is strictly memory here. I left it a little loose.

Q. I will refer you, then, to page 58.

Mr. Jaureguy: Pardon me. I think we could appropriately—if I may point out here—that he later corrected that part of the deposition, made a change on that.

Mr. Strayer: Well, you made the change after the deposition. What I am not sure, if I recall, Winans or he made the——

Mr. Jaureguy: That is the only correction?

The Witness: Yes.

Q. (By Mr. Strayer): I am not referring now to whether you called him or whether he called you, but your best recollection is that you called him on the phone, is that right?

A. As I remember, yes.

Q. Page 58 of your testimony:

“Q. When you talked to Mr. Winans on the phone, what did you tell him?

“A. I don't remember the exact words. I told him that I was involved in that deal; that I was going to take it over and Stegmann was going to pay him the \$4,000, and I was going to take the deal over.

(Testimony of Chet L. Parker.)

I was going to come up there late in the afternoon, as I remember telling him, and I was going to see that Stegmann turned over—gave him the \$4,000 check, [235] and that he distinctly understood that from then on he was dealing only with me.

“Q. You told him that on the telephone?

“A. Yes, because he was curious.”

Q. Do you remember giving that testimony?

A. Yes.

Q. So that before you ever saw Mr. Winans on August 18th you had already told him by phone that you were buying the property from Stegmann or had bought it and that he was going to be dealing with you from then on, is that right?

A. Well, he would be dealing with me, yes; I made that statement.

Q. You told him that? A. Yes.

Q. What do you mean when you say, “because he was curious”?

A. Well, I suppose he wanted to know when to cut it off or when to go on or what the deal was.

Q. What is that?

A. I suppose he wanted to know when to cut it off or what the deal was.

Q. When you would cut it off? A. Yes.

Q. You mean the cut-off between you and Stegmann? A. Well, yes. [236]

Q. Did he appear to be surprised to learn that you had taken the option over?

A. I don't know whether he was surprised or not.

Q. How do you know that he was curious?

(Testimony of Chet L. Parker.)

A. Well, he just acted curious.

Q. What did he say that makes you think he was curious?

A. I don't remember distinctly what he said, but I remember him.

Q. Did he ask you any questions?

A. Well, possibly so, but I remember him being curious.

Q. Do you remember what he asked?

A. No.

The Court: Yesterday, in response to a question of mine, didn't you testify that you felt free to discuss the matter with Mr. Winans after the \$4,000 had been paid because you thought that the deal was set at that time, and that prior to that time you were concerned because you did not know whether the option was assignable? Is it your testimony now that you called Mr. Winans before the \$4,000 was paid and told him that he should deal with you?

The Witness: Yes.

The Court: So you want to correct your testimony as of yesterday?

Mr. Jaureguy: The testimony was that he would deal with him after the \$4,000 was paid. [237]

The Court: I think we will take a recess.

(Recess.)

Q. (By Mr. Strayer): Mr. Parker, let us go back to this \$25,000 check that was under discussion yesterday when you were on the witness stand. In

(Testimony of Chet L. Parker.)

order to get the continuity here, as I recall, your testimony was that you asked for the check back on or shortly before September 20th; told Mr. Stegmann that if he did not return it that you would stop payment on the check. Your testimony was that he then returned the check to you, and you deposited it in the bank on the 20th.

Was there any discussion with Mr. Stegmann about the application of the proceeds of that check on any of your loans?

A. Yes; he didn't—he said that is the only way he would return it to me, on this \$22,000 loan that I made to him on November, 1950. It was not due yet.

Q. Let's see if I understand you. On the 20th or within a day or two before that, whenever you had your discussion with him, you demanded the check back, and he told you he would give it back if you would apply it on the note? A. Yes.

Q. At that time, as I recall, you were complaining that you had apparently received a bum title, and that was the [238] reason you were demanding the check back?

A. That is the reason I gave him.

Q. Was there another reason?

A. Well, I said yesterday that I heard that the Sheriff was down there checking on some of his funds, and I would like to have that loan paid back.

Q. Do I understand you to mean to testify now, then, that the reason that you asked for the check back was because you were worried about that loan?

A. I was a little perturbed about the Sheriff

(Testimony of Chet L. Parker.)

being down there. I told him however, that I would—that there was something wrong with the title, apparently. I didn't know how bad it was, or good, but I used that advantage to get the check back.

Q. You did not tell him that the Sheriff was down inquiring at the bank?

A. I don't remember whether I told him or not. I could have.

Q. Your real reason for asking for it back was that you had heard that the Sheriff was down at the bank?

A. Yes, I wanted that paid back on that loan.

Q. And the fact that the title was bad had nothing to do with your asking for the check back?

A. I don't know. I didn't know whether the title was bad or good. I had heard that there was a defect in it. [239]

Q. Did that knowledge that you had of the defect, did that have anything to do with your asking for the check back?

A. The principal reason I asked for the check back was because I wanted that money back from the loan.

Q. Was there any other reason?

A. Well, that was the main reason.

Q. Was there any other reason?

A. Well, if I didn't get it back he would cash it.

Q. Was there any other reason in addition to your concern about the loan for asking for the check back?

A. No.

Q. Then the fact that there was a defect in title

(Testimony of Chet L. Parker.)

or that you had heard that there was a defect in title had nothing whatever to do with your asking for the check back?

A. No, that gave me the advantage I needed to get it back.

Q. What?

A. No, I said that gave me an advantage I needed to get it back, I said.

Q. But that had nothing to do in your thinking in asking for it back? A. No.

Q. And right at that very time? A. No.

Q. Stegmann then told you that he would not give it back unless you applied it on the loan? [240]

A. Yes, that's right.

Q. That was a condition that he attached in returning the check to you? A. Yes.

Q. Mr. Parker, I want to refer you to Page 216 of your deposition, at the bottom of Page 215, the last line on Page 215:

"Q. You turned this check over to him, you say, the evening of Monday, August 13th; is that correct? A. Yes.

"Q. Nothing was said about the money he owed you at that time?

"A. Well, I wouldn't say nothing was mentioned about it. Not that I remember anything specifically.

"Q. That none of his notes or accounts to you were then due and owing?

"A. I don't think a one of them was. Maybe some interest that should be paid, as I remember."

(Testimony of Chet L. Parker.)

Do you remember giving that testimony?

A. Yes.

Q. All right. Now, first, as to the date at the top of Page 216, August 13th, that is a wrong date, as I understood— [241] no, I beg your pardon, that is the correct date. That is the date that you gave the check to him, isn't it? That is what it says.

A. Yes.

Q. How about your testimony at that time that you do not remember any discussion with Mr. Stegmann about the money that he owed to you?

A. I don't remember making any discussion on the 13th.

Mr. Jaureguy: It is my understanding, your Honor, that the purpose of reading these depositions is to show some prior inconsistent statements, and the testimony that he has been telling about is about something that took place several days later.

Mr. Strayer: No, this testimony in the deposition relates to a conversation at the time the check was returned to Mr. Parker.

Mr. Jaureguy: No, the deposition does not. That deposition refers to the time that the check was given from Mr. Parker to Mr. Stegmann.

Mr. Strayer: I think probably you are right. I think I am in error.

The Witness: Yes, the check was returned some five weeks later.

Mr. Jaureguy: About five weeks.

Mr. Strayer: I think I am in error, your Honor. I [242] misinterpreted the testimony.

Q. You had heard at the bank that the Sheriff

(Testimony of Chet L. Parker.)

was looking for money belonging to Stegmann shortly before the 20th when you got the check back. Was that the first information you had that the Sheriff might be looking for money or property belonging to Mr. Stegmann?

A. I think that was the only time I ever heard of it.

Q. You had never heard before that anyone was trying to collect money from Mr. Stegmann?

A. Well, I might have heard someone was collecting money from Mr. Stegmann, but that was the first time I heard that the Sheriff was trying to collect any money from Mr. Stegmann.

Q. You knew Mr. Stegmann was in financial difficulties, didn't you?

A. Yes; as to the extent I didn't know exactly.

Q. Well, you knew that when you gave him the \$25,000 check, did you not?

A. Well, I suspicioned it.

Q. What is that? A. I suspicioned it.

Q. It was more than a suspicion, wasn't it, Mr. Parker?

A. Well, it wasn't absolute by any means.

Q. When you gave him that check on August 13th did you expect him to cash the check? [243]

A. Yes, I thought he would cash it.

Q. Did you expect him to put the money in his own bank account?

A. I didn't expect him—I would expect him to do whatever he wanted to do with the money.

(Testimony of Chet L. Parker.)

Q. What was your thinking? Did you think that he was going to cash it and take the money in cash or that he was going to open a bank account?

A. Well, I presumed he would, but I didn't know what he would do. He didn't tell me whether he would cash it or what he would do with the check.

Q. You were not concerned at that time about your \$22,000 note? A. Pardon me?

Q. You were not concerned at that time about whether you were ever going to collect that \$22,000, were you?

A. Well, it wasn't due, and I was quite sure that I would get the \$22,000.

Q. You were not worried about that a bit?

A. No.

Q. You didn't discuss with Mr. Stegmann at that time canceling his \$22,000 note instead of giving him the cash payment?

A. No—that is on August 13th are you referring to?

Q. Yes. [244]

A. That's true. I did not discuss it with him.

Q. It didn't even occur to you to discuss that with him? A. No, it wasn't due yet.

Q. Were you surprised as the days went by and you learned from the bank that the check had not been cashed?

A. Well, I made an inquiry at the bank.

Q. That is what you said yesterday, that you did, but were you surprised when you found that the check had not come in?

(Testimony of Chet L. Parker.)

A. Yes, I was surprised.

Q. When was that inquiry, incidentally, how long——

A. I don't remember when the inquiry was.

Q. Was it fairly soon after you gave the check?

A. No, it was later on.

Q. Why did you make that inquiry?

A. As I remember, my wife didn't notice it coming in, and I am not sure whether I made the inquiry. Maybe she made it.

Q. Well, now, referring to—may I take this apart?

Mr. Jaureguy: Yes.

Q. (By Mr. Strayer): Referring to these two checks of August 14, 1951, for \$25,000, and the check of September 12, 1951, for \$382—I believe we had better have this marked as an exhibit.

(Check No. 1138, August 14, 1951, in the amount of \$25,000, was thereupon marked Plaintiff's Exhibit 40-A for Identification.) [245]

(Check No. 1193, of 9-12-51, \$382, was thereupon marked Plaintiff's Exhibit 41-A for Identification.)

Mr. Strayer: May the record also show that both of the checks, 40-A and 41-A, are also pre-trial exhibits attached to the deposition of Mr. Parker and that some pre-trial—deposition exhibit is 74——

Mr. Strayer: No. 74 is a pre-trial exhibit number of several documents attached together including these two checks.

Q. Your testimony is, Mr. Parker, that these

(Testimony of Chet L. Parker.)

checks were made out and delivered to Mr. Stegmann on the date of the checks, the respective dates?

A. Yes. However, I didn't make out the August 14, 1951, check. I can refer to the 9-12-51, because I made that one out.

Q. Yes, your testimony was that the August 13th or 14th, whatever that is, check for \$25,000 was made out and signed by your wife; is that correct?

A. Yes.

Q. But it was made on the date that the check was dated, you say?

A. Well, I am even confused about the date, but it looks like the 14th.

Q. Let us put it this way: It was made out and delivered [246] at the time that the option was assigned to you?

A. Yes, I am sure of that.

Q. That was over at The Dalles. The check of \$382, dated September 12, 1951, where was that made out and delivered?

A. Well, I don't know where it was made out. I don't remember where it was made out at, and I don't know whether it was handed to him or mailed to him.

Q. You do not know, then, whether it was made out in The Dalles or whether it was after you went home to Vancouver?

A. No, I don't remember.

Q. What does your diary indicate on that?

(Testimony of Chet L. Parker.)

A. It does not make any mention of it in my diary.

Q. Look under September 10, 1951, in your diary, Mr. Parker, next to the last paragraph.

A. It indicates that I—the diary indicates that I delivered him this check on the—or I paid him on the 10th.

Q. It also indicates that you were at The Dalles at that time, does it not?      A. At Dufur.

Q. At Dufur, that is over the other side of The Dalles?      A. It makes mention here at Dufur.

Q. Yes; now, what kind of a checkbook did you use, Mr. Parker, what kind of checkbook did these checks come out of?

A. These checks came out of a large bank book that the bank sold us or gave us. [247]

Q. Is that one of those large books with three checks on each page?

A. As I remember, it is three checks, or four, on each page.

Q. Is that what you call a payroll checkbook, or did you have a name for it?

A. No, I think I just tore out some checks when I wanted to take them with me, or I just used those checks.

Q. You did not have the checkbook itself with you then over there at The Dalles?

A. I might have, and maybe I didn't have.

Q. Wouldn't that have been a little unusual to carry a big checkbook along like that?

A. No, it would not be usual or unusual, either

(Testimony of Chet L. Parker.)

one. We do have it sometimes. Sometimes we do not. Sometimes I tear them out, put them in my billfold. I think I have two or three now in my billfold.

Q. Do you remember whether you had your checkbook with you at the time that you were over there at The Dalles when these two checks were given? A. Goodness no. I certainly do not.

Q. It was your practice to tear some of the checks out of your big checkbook and carry them along with you in your pocket?

A. I do that all the time.

Q. As far as you know, it may be that these blanks had been [248] torn out; you just took them out, made them out there at The Dalles, and delivered them; is that right? A. Very possible.

Q. You say that that was a frequent practice of yours to do that? A. Yes, it still is.

Q. What is the significance of the serial numbers on these checks? Are they numbered consecutively from the top of the book down to the bottom?

A. Well, I don't order the numbers, and I just—when I need three checks I just reach in and tear out three checks. Numbers mean nothing to me. The only number that means anything to me is the amount of money that I fill in that I know I have got to pay to someone. The number of the checks running in unison, whatever you might say, means nothing to me.

Q. My question is: Are the checks numbered consecutively starting at the top and going down to the bottom of the book? A. I think they are.

(Testimony of Chet L. Parker.)

Q. You say that numbers mean nothing to you. When you tear out checks, do you tear them from any particular part of the book?

A. I generally take whatever a full page would be, fold it up, put it in my billfold.

Q. Do you pull that off the top or bottom?

A. Well, sometimes my wife has already written one or two on the same sheet. I just tear them off the same thing, take [249] a whole page with me.

Q. From what part of the book do you tear out a page?

A. Any place I happen to come across.

Q. You just open the book and tear out a page?

A. That's right, if there is nothing on the blank. I don't think numbers mean anything. It seems like we have been operating that way for years. The numbers don't change much, approximately the same numbers.

Q. Am I correct, then, in my understanding of your testimony that if we were to look over your checks, we will say for the year 1951, we would expect to find no rhyme or reason to the dates as compared to the serial numbers?

A. Oh, no; no, you would not find, as far as the ones I write, you wouldn't find anything that even resembled a systematic system.

Q. We would find a good many instances, then, you think, where you might have torn a check out the middle of the book and made it out, and the

(Testimony of Chet L. Parker.)

serial number would not correspond with the dates on either side of it?

A. I want to correct you in that respect. When we write a check in the book itself we write them each one in sequence, but when I tear them out I just grab the book, tear out a page out of it, fold them up, put it in my billfold.

Q. You say that is a frequent occurrence?

A. Oh, yes; I have them in my billfold now, I believe. That [250] is very common.

Q. Do you have any explanation of the fact, or don't you know what the explanation is of the fact that the check for \$382 does not appear to have been cashed until—look at the date on it—I believe it was in December, 1951; is it not?

A. December what, pardon me?

Q. Look on the \$382 check which you have before you. Doesn't the stamp indicate that was cashed sometime in December?

A. I don't know how you tell.

Q. The puncture marks on it. A. Oh.

Q. Can you tell the date?

A. Oh, it is 12-31-51, I believe.

Q. December 31, 1951?

A. Yes, I believe that is what it means.

Q. Pardon me.

A. It looks like that's what it is.

Q. Do you have any idea why the check was not presented until that late date?

A. No, it was out of my care, custody and control.

(Testimony of Chet L. Parker.)

Q. Was it called to your attention either by your own examination of your books, with or by Mrs. Parker, that that check had not come in?

A. I never paid too much attention to these smaller, what [251] I call the smaller checks. The larger ones we keep our eye on some.

Q. It never occurred to you then, to ask Mr. Stegmann to give the \$382 check back?

A. No.

Q. Or to stop payment?

A. No, that never occurred to me.

Q. You say that the agreement was with Mr. Stegmann that you would apply this \$25,000 check on the \$22,000 note. That \$22,000 note was made on November 20, 1950?

A. Oh, I don't know the date, but I know it was in November, 1950.

(Discussion off the record.)

Mr. Jaureguy: I want to say for the record that 75 is an envelope with a lot of exhibits in it.

Mr. Strayer: May we have this one marked as 35-A, and may the record show that 35-A was taken from the Exhibit 75, the envelope?

The Court: I do not think that is necessary.

(Document, Note dated November 20, 1950, together with typewritten agreement, November 20, 1950, was thereupon marked Plaintiff's Exhibit 35-A for Identification.)

(Testimony of Chet L. Parker.)

Mr. Strayer: I think this should be attached as part [252] of the same exhibit, your Honor.

The Court: Very well. Is that 75-B?

Mr. Strayer: No, that would still be 35-A. It came from the same envelope.

The Court: Clip it together.

Q. (By Mr. Strayer): I would like to have you examine Exhibit 35-A, which consists of a note in the sum of \$22,000, dated November 20, 1950, and another document purporting to be a mortgage accompanying it. Are those the instruments that were executed by Mr. Stegmann on November 20, 1950?

A. No.

Q. What are they?

A. That mortgage and the note here I have.

Q. Were they signed by Mr. Stegmann on November 20, 1950? A. Yes.

Q. The note is for \$22,000, payable at 4 per cent interest payable in one year; is that correct?

A. Yes.

Q. The mortgage covers one converted Willamette yarder and one Austin Western road grader, is that correct?

A. Together with rigging and other equipment attached, and so on.

Q. Now, I wish you would explain to the Court, if you will, the background of that loan and just what occurred?

A. Well, Mr. Stegmann didn't make those out. My wife made [253] these out, and this was a cash loan that we made to Mr. Stegmann.

(Testimony of Chet L. Parker.)

The Court: What do you mean, a cash loan?

The Witness: Currency, cash currency.

The Court: You gave him \$22,000?

The Witness: Yes, on November 20th, 1950.

Q. (By Mr. Strayer): How did that loan come about? Had he asked for a loan?

A. Yes, he had asked for a loan.

Q. What were your discussions about it?

A. Well, I told him we had some money that we would loan him.

Q. Did he ask for a loan of money first?

A. Well, yes, I didn't—he asked me to borrow money.

Q. I want to get all the circumstances, Mr. Parker. He must have told you what he wanted the money for, how much he wanted, just what he would like to do, and you must have given him some answer. Just give us as nearly as you can just what the discussion was.

A. It has been a long time ago—as I remember—the reason I remember the loan is because it was in currency, and we wanted—my wife wanted to make a little interest on it instead of laying around in the bank.

The Court: I did not hear that last remark.

The Witness: My wife wanted to make some interest on it [254] rather than having that laying around in the bank. I remember having that discussion with my wife.

Q. (By Mr. Strayer): Do you remember Mr.

(Testimony of Chet L. Parker.)

Stegmann saying what he wanted to do with the money?

A. As I remember he was in an operation of some kind, logging, or doing something at that time. I don't remember. We discussed logging, aspects of this and that and other pieces of property, and he was going—it seemed like he was going to purchase some property up out of McMinnvile.

Q. What kind of property, timber property?

A. Yes, timber property.

Q. Was the price of that to be \$22,000?

A. No, not all of it. He wanted to purchase that piece of property and another one and to do his logging, too.

Q. What properties was he going to purchase? Let us talk about them for a moment.

A. Well, he didn't describe the properties to me. I didn't expect him to. After all, I was in the business of logging, too. If I knew where they was at I might go out and buy them.

Q. He didn't tell you the names of the owners?

A. No.

Q. But he did tell you there were two pieces of timber he wanted to buy; is that right?

A. Yes, he mentioned specifically two [255] pieces.

Q. What else did he tell you he needed money for?

A. Well, there was quite a substantial amount of it.

Q. How much of it?

(Testimony of Chet L. Parker.)

A. Well, I don't remember exactly, but I think it was within two or three thousand dollars of all of it.

Q. What was he going to do with the additional money, then?

A. Well, he was going to do with his equipment, fixing it up, taking care of it.

Q. Doing what?

A. Fixing his equipment up and taking care of it and so forth. He said \$22,000 was all the money he would need.

Q. Did you understand he was going to log that timber himself?

A. Well, it was not clear to me that he was going to buy it for logging or for resale, but I understood him to say—or it was in my mind that he was going to log it.

Q. How much did he owe you at that time, Mr. Parker?

A. I don't know. I would have to look at the rest of the papers we have on it.

Q. Will you give us an estimate?

A. I would not be able to give you an estimate.

Q. Did you have some mortgages on his equipment at that time?

A. I don't believe so—well, I had this mortgage on his equipment. [256]

Q. No, I mean before this mortgage was signed on November 20th, did you have some mortgages on some of his stuff?

A. I don't remember. I could have. They were

(Testimony of Chet L. Parker.)

very, they were nominal, I think, that he owed at that time.

Q. Did you have a mortgage on his house at that time?

A. I could have. I am not sure about that.

Q. You had sold him a house in McMinnville in 1949, was it or 1950?

A. I don't remember which year it was, but I sold him a house in McMinnville.

Q. You took a mortgage on it when you sold it, did you?      A. No, I did not.

Q. You took a mortgage later on, then?

A. Yes, as I remember, later on.

Q. You don't know whether that mortgage was given before or after the November 20th note?

A. No, I don't remember. It is all a matter of record here. We have it.

Q. Yes, we will get to that a little bit later. All right. Let's go back to the \$22,000 note. He was going to buy two pieces of timber which took up all of it except two or three thousand dollars, and you understood that that two or three thousand was to be used for fixing his logging equipment up for the logging?

A. Or do some logging, yes; or do the logging with it, whatever [257] he was going to do with it.

Q. Your testimony is that you had some money in currency that was not working, and you wanted to put it to work?      A. That is right.

Q. Where was that money kept?

(Testimony of Chet L. Parker.)

A. In a safe deposit box in the First National Bank of McMinnville, Oregon.

Q. How long had you been keeping that amount of currency in a safety deposit box?

A. Quite considerable. Well, ever since I think we had the box there.

Q. How long had you had a box?

A. Well, I don't remember.

Q. Well, about how long?

A. Oh, possibly a year or so.

Q. I believe, and I could be in error on this, but I believe in your deposition page 189, I believe you fixed the date on that. You placed the opening of the safety deposit box at the time that you moved to McMinnville, and you said you moved to McMinnville about in 1948. Was that about the time, do you recall?

A. Well, my testimony is the same as it was then.

Q. Yes, I am not implying that there is any difference. I am asking you whether in 1948 would be about the time that you opened the safety deposit box? [258]

A. Well, I don't remember. I didn't open it myself. My wife did. I wouldn't remember exactly.

Q. How long had you been in the practice of keeping large amounts of currency in a safety deposit box?

A. What are you referring to, large amounts?

Q. Well, \$22,000.

A. Well, I had had more than that in there, so I figured that would be——

(Testimony of Chet L. Parker.)

Stegmann saying what he wanted to do with the money?

A. As I remember he was in an operation of some kind, logging, or doing something at that time. I don't remember. We discussed logging, aspects of this and that and other pieces of property, and he was going—it seemed like he was going to purchase some property up out of McMinville.

Q. What kind of property, timber property?

A. Yes, timber property.

Q. Was the price of that to be \$22,000?

A. No, not all of it. He wanted to purchase that piece of property and another one and to do his logging, too.

Q. What properties was he going to purchase? Let us talk about them for a moment.

A. Well, he didn't describe the properties to me. I didn't expect him to. After all, I was in the business of logging, too. If I knew where they was at I might go out and buy them.

Q. He didn't tell you the names of the owners?

A. No.

Q. But he did tell you there were two pieces of timber he wanted to buy; is that right?

A. Yes, he mentioned specifically two [255] pieces.

Q. What else did he tell you he needed money for?

A. Well, there was quite a substantial amount of it.

Q. How much of it?

(Testimony of Chet L. Parker.)

A. Well, I don't remember exactly, but I think it was within two or three thousand dollars of all of it.

Q. What was he going to do with the additional money, then?

A. Well, he was going to do with his equipment, fixing it up, taking care of it.

Q. Doing what?

A. Fixing his equipment up and taking care of it and so forth. He said \$22,000 was all the money he would need.

Q. Did you understand he was going to log that timber himself?

A. Well, it was not clear to me that he was going to buy it for logging or for resale, but I understood him to say—or it was in my mind that he was going to log it.

Q. How much did he owe you at that time, Mr. Parker?

A. I don't know. I would have to look at the rest of the papers we have on it.

Q. Will you give us an estimate?

A. I would not be able to give you an estimate.

Q. Did you have some mortgages on his equipment at that time?

A. I don't believe so—well, I had this mortgage on his equipment. [256]

Q. No, I mean before this mortgage was signed on November 20th, did you have some mortgages on some of his stuff?

A. I don't remember. I could have. They were

(Testimony of Chet L. Parker.)

very, they were nominal, I think, that he owed at that time.

Q. Did you have a mortgage on his house at that time?

A. I could have. I am not sure about that.

Q. You had sold him a house in McMinnville in 1949, was it or 1950?

A. I don't remember which year it was, but I sold him a house in McMinnville.

Q. You took a mortgage on it when you sold it, did you?      A. No, I did not.

Q. You took a mortgage later on, then?

A. Yes, as I remember, later on.

Q. You don't know whether that mortgage was given before or after the November 20th note?

A. No, I don't remember. It is all a matter of record here. We have it.

Q. Yes, we will get to that a little bit later. All right. Let's go back to the \$22,000 note. He was going to buy two pieces of timber which took up all of it except two or three thousand dollars, and you understood that that two or three thousand was to be used for fixing his logging equipment up for the logging?

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A. What are you referring to, large amounts?

Q. Well, \$22,000.

A. Well, I had had more than that in there, so I figured that would be——

(Testimony of Chet L. Parker.)

Q. How much did you have in there on November 20, 1950?

A. I believe probably around \$32,000, possibly. I am not sure of the exact amount.

Q. Well, now, after you made this loan arrangement with Mr. Stegmann, then what did you do, go up and take out that \$22,000 in currency out of the box?

A. My wife took care of it. I think she got it out beforehand.

Q. Oh, before November 20th?

A. Oh, yes; yes, she got it out of the safety deposit box before this time.

Q. How long before?

A. I don't know. I remember keeping it upstairs. She was quite worried about it. She has got a jewel drawer in her—I don't know what you call them, commode, or something, and she kept it in there.

Q. You mean she had one of these little chamber boxes to [259] keep her jewelry in that she kept the money in?      A. Yes.

Q. It had a lock on it?

A. Well, it was in a commode, whatever you call it, had a secret lock, I remember. You reached in behind and snapped a button, and out come the drawer.

Q. How long before November 20th did you take the money out of the safety deposit box?

A. I didn't take it out; my wife did.

Q. How long before November 20th?

(Testimony of Chet L. Parker.)

A. I don't know how long before, but I would guess a couple, three weeks.

Q. Did she take out just \$22,000, or did she take more out?

A. Well, she was supposed to take out \$22,000. I presume she just took that much out.

Q. How does it happen that she just happened to take out the same amount that you loaned to Walter Stegmann several weeks later?

A. We discussed this previously.

Q. Oh, you had been talking with Mr. Stegmann for some little time about the loan, had you?

A. Well, a couple, three weeks at least.

Q. So, on November 20th then, you made that deal. Who typed up that mortgage?

A. My wife did. [260]

Q. Did you dictate it or tell her what to put in it?

A. No, she knows more about that than I do. I didn't tell her what to put in it, other than the equipment. I might have told her to put that in.

Q. Am I correct in my impression here that your wife got that money from a safety deposit box so that she would have it on hand to give to Mr. Stegmann when you closed your deal?

A. Yes.

Q. It was gotten for that specific purpose?

A. Yes.

Q. You had it around the house for two or three weeks until you completed the deal?

A. That's right.

Q. During that two or three weeks while you

(Testimony of Chet L. Parker.)

were discussing it with Mr. Stegmann, what was the reason for that delay?

A. Well, I don't remember the delay. I remember my wife being a little perturbed about it, about the money being there.

Q. Did that delay by any chance have something to do with your satisfying yourself that it was a safe loan to make?

A. No, I figured he was a good bet.

Q. You never had any doubt about that?

A. No, because in all my experience with loggers and timbermen I had never been beat out of a penny, and lots of times thousands of dollars had been involved where there wasn't a [261] scratch of a pen; many, many times.

Q. Was there any particular reason why you were going to give Mr. Stegmann cash rather than a check?

A. Well, it was put in there for a cash emergency fund. We have it in there now the same—in case the bank goes broke, why, we know where it is at.

The Court: In case what?

The Witness: In case the bank goes broke we know where the money is at.

Mr. Strayer: Does your Honor have the question?

The Court: No, I didn't hear.

Q. (By Mr. Strayer): Well, I understand that part of it, Mr. Parker, I think, but my question is was there any particular reason why you had to run

(Testimony of Chet L. Parker.)

the risk of keeping that money around your home for two or three weeks rather than depositing it in the bank and then giving Mr. Stegmann a check?

A. No, she could have taken it back, but she didn't. I think she thought that Stegmann would show up to complete this deal, and he didn't show up, as I remember, until on November 20th, 1950, to complete the deal.

Q. There was not any reason that you knew of, then, why you gave him cash instead of a check?

A. Yes; yes there was a definite reason why we gave him cash. [262]

Q. What was it?

A. Well, the cash was laying down there, and my wife wanted some interest on it.

Q. It never occurred to you that you could deposit the cash in your account, then give Mr. Stegmann a check?

A. Well, she didn't want to confuse her book-keeping. The cash we had in there we had been paying income tax on it, and all of it is parceled here by where we got it from, and the way she keeps her books on these checks with the current expense for them, and this other was a separate savings that we had, and we didn't have a separate savings account at the bank other than this cash money, which we have at this time, a cash fund there for savings.

Q. You wanted to get this money out working for you?      A. That is what she had in mind.

Q. Mr. Stegmann thought he could pay this loan off in about a year, did he?

(Testimony of Chet L. Parker.)

A. Yes, or sooner.

Q. He expected to make enough money out of this timber work to pay back the loan within a year with interest?

A. That was the plan he outlined to me.

Q. Did you figure 4 per cent would be a handsome return on that money?

A. Well, he would not hold still for any more.

Q. What is that?

A. He would not hold still for any more. [263]

Q. Did you try to get more?

A. Yes, I certainly did.

Q. What interest did you want?

A. I wanted 8 per cent.

Q. You bargained back and forth and got down to 4 per cent?

A. Yes, he said that loans like that you could get it for 4 per cent.

Q. Was there any particular reason why you did not record your mortgage, Mr. Parker?

A. Well, we never did record many mortgages.

Q. You recorded the mortgage on the home, didn't you?

A. Yes. Well, wait, I think we did. I am not sure.

Q. You never followed the practice of recording mortgages?

A. Oh, my, no. I would say ten per cent of the mortgages we have had have been recorded. The

(Testimony of Chet L. Parker.)

others have not. I am not saying ten per cent exactly, but thereabouts.

Q. What effort did you make to find out about Mr. Stegmann's financial stability at the time you made that loan?

A. Well, Mr. Otto Heider, I did mention to Mr. Otto Heider something about Mr. Stegmann.

Q. What did he tell you?

A. Well, he told me he was slow but good.

Q. What did he tell you about his property and resources?

A. Well, as I remember, Mr. Heider told me that he had loaned him money, large sums, and that he was slow but good. [264]

Q. What did he tell you about security?

A. Well I didn't ask him about the security.

Q. You did not ask him what property Stegmann had and what his assets were or what his liabilities were?

A. No, I didn't. I was not—I would not have expected his answer if I would have.

Q. Did Mr. Heider tell you at that very time that he had mortgages on some of Stegmann's property in rather substantial amounts?

A. Well, he indicated that he had had substantial amounts. He did not name a definite figure, but I gathered it was very typical of this loan.

Q. You gathered that they had been paid off, and he didn't owe Mr. Heider anything at that time?

A. Well, he might have owed Mr. Heider, but a

(Testimony of Chet L. Parker.)

lot of it had been paid off. It was, as I gathered, in good shape.

Q. Did you go to the County records to check on what mortgage indebtedness there could be against him?

A. No, I would not even know where to go if I did go there to find out.

Q. Did you know that Mr. Stegmann owed a good many people money? Did you have any information on that at all?

A. What do you mean by a good many, lots and lots of people?

Q. Oh, yes.

A. No, I didn't know that he owed, I never—other than [265] his labor or some of those people owed over on 30-day accounts or something like that. I knew he was in business.

Q. You did not know he had any real bills that amounted to anything?

A. No real large ones.

Q. What do you call real large ones?

A. Oh, ten or fifteen thousand dollars.

Q. What is that?

A. Ten or fifteen thousand dollars.

Q. Did you know of any accounts that he had not paid in connection with any of his previous logging activities?

A. At this time?

Q. Yes.

A. No; no definite that I can remember that I knew that he——

Q. Don't you recall one in particular, Mr. Parker, that you had known about down there at

(Testimony of Chet L. Parker.)

the Willamina Garage, a bill of something like \$4000 for repairs on logging equipment? Did you know about that bill?

A. Well, I did not know that there was a bill at the garage. I didn't know anything about the particulars or anything on it.

Q. What did you know about it?

A. Well, I don't—as I remember now, I don't think I knew much of anything about it.

Q. You did know, Mr. Parker, didn't you, that the garage [266] was holding a truck down there as security for that bill, and you went and hired Otto Heider to replevy the truck; you knew that, didn't you? A. No, because I didn't do that.

Q. Didn't you bring a replevin suit to recover the truck from the garage?

A. Not that I remember.

Q. You never authorized Mr. Heider to bring a suit on that?

A. No, I never paid him any money, and I would presume he would want to be paid if I hired him.

Q. I think we had better get the details on that truck. I will pass that for the moment and let Mr. Buell get me the information.

This equipment that you took on this mortgage, this Williamette yarder and this Austin Western road grader, have you ever seen this equipment?

A. Yes, sir.

Q. Where and when?

(Testimony of Chet L. Parker.)

A. Oh, several times I saw it.

Q. Well, when?

A. Well, I can't rememer exactly the day I saw this equipment.

Q. All right, approximately?

A. Well, I would say previous to this, the time this note and mortgage was made out I probably saw it 30 days before that. [267]

Q. Where was it when you saw it?

A. Well, the yarder, as I remember, was up in Tillamook Burn.

Q. Whereabouts in the Burn?

A. Well, up above Bear Creek.

Q. Bear Creek?           A. Bear Creek.

Q. On what operation?

A. Well, I presume it was his own. I don't know.

Q. How did it happen you saw it up there?

A. I own timberlands up in that country.

Q. Was he logging in some of that timber at the time?

A. Well, I think this yarder was logging some timber.

Q. In your timber?

A. No, no; it had nothing to do with my timber.

Q. In what timber was it logging?

A. Well, I don't know who owned the timber.

Q. Well, who had the logging show?

A. Well, Mr. Stegmann was supposed to own the yarder.

Q. Was he conducting the logging show?

(Testimony of Chet L. Parker.)

A. I presume he was, yes.

Q. Did he tell you he was?

A. Yes, he described where it was, and I told him I remembered going by the yarder. [268]

Q. Did he tell you that that was his logging show up there?

A. He told me the lumber belonged to him.

Q. You have not answered my question. My question is, did he tell you that that was his logging show up there?

A. He didn't tell me it was his logging show in the sense that he owned it.

Q. You saw a yarder working there at some previous time when you were up there?

A. Yes, I saw a yarder up there.

Q. So when you got to talking to him about security you remembered you had seen that yarder up there working? A. Yes.

Q. And you said, "Yes, that is the yarder I want mortgaged"; is that right? A. Yes.

Q. How about the road grader? When had you seen that?

A. Oh, I had seen it, oh, many times at various places.

Q. Well, when and where?

A. Well, I don't know exactly the date when, but I remember where several times.

Q. Well, where, then?

A. Well, I had seen it on some Willamina lumber jobs.

(Testimony of Chet L. Parker.)

Q. You mean jobs that Stegmann was doing for Willamina Lumber?

A. Well, I don't know that he was doing it for them, but it was his—this equipment was on—he was around the jobs. [269] I don't know what arrangements exactly he had with Willamina Lumber.

Q. What jobs were they, Mr. Parker?

A. Well, up Gopher Valley was one, I think.

Q. He was using this grader on a Gopher Valley job?

A. Well, it was sitting on the road there. I presume he was using it.

Q. How long before November 20, 1950, did you see a grader?

A. I would say very recently before then.

Q. How long before?

A. Oh, 30, 60 days from there.

Q. That was long after the Gopher Valley job had been completed, was it not?

A. Well, possibly it was. Which Gopher Valley job are you referring to when you say it was completed?

Q. Well, it is your wording. What do you mean by the Gopher Valley job?

A. Well, I don't know whether he has ever completed it or not. I am referring to jobs for Willamina Lumber Company, and he had some logging equipment in various places; Gopher Valley and

(Testimony of Chet L. Parker.)

up above Willamina toward his ranch and various places.

Q. Where did you see the grader 30 to 60 days before this note was signed?

A. As I remember, it was Gopher Valley.

Q. Sitting alongside the road? [270]

A. As I remember, yes.

Q. And he told you that that was the grader that he was mortgaging to you? A. Yes.

Q. Did you make any check to find out whether he really owns that equipment?

A. Well, I believe he did. I sold it to him.

Q. You sold the equipment to him?

A. I sold him the grader.

Q. When was that?

A. Oh, I don't know; a year or two before that.

Q. A year or two before that? A. Yes.

Q. How much did you sell the grader for?

A. Well, it seems like—I am not sure how much I got out of it.

Q. Oh, about how much?

A. Well, it had to do—he was going to build a little road into some logs he was to load out for Willamina Lumber, but it had something to do with that road-building there, too.

Q. It had nothing to do with Gopher Valley?

A. No, no; it was separate from that.

Q. How much did he pay for that grader, then?

A. I don't know how much he paid for the grader. [271]

Q. Can't you give any estimate of it?

(Testimony of Chet L. Parker.)

A. Well, it was combined in this road agreement.

Q. Do you know whether there was a mortgage on the grader at the time of this transaction?

A. No, I don't know whether there was or wasn't. He said it was free and clear, so I presume they were.

Q. Do you know what became of the grader?

A. No, I do not.

Q. Have you ever seen it since?

A. Yes, I saw it later.

Q. When?

A. Well, a month or two later, if I remember.

Q. When was the last time you saw it?

A. I don't know when the last time was I saw it.

Q. How about the other piece of equipment, the yarder? When did you last see it?

A. Well, there was a snow came on that spring, I think was the last time I saw it.

Q. The spring of '51?

A. Well, in the winter of '50-'51.

Q. That is the last time you saw it. Do you know what became of it?

A. No; no, I do not.

Q. Well, now, going back to that claim of the Willamina Garage, is it your testimony that you did not file an action [272] against Marlow T. Ellis of the Willamina Garage on August 23, 1950, to replevy a truck and trailer?

A. Who was the attorney for that?

Q. Well, Mr. Heider was your attorney, I believe.

(Testimony of Chet L. Parker.)

A. Well, I do not remember hiring Mr. Heider.

Q. Well, let us leave Mr. Heider out of it, then.

Regardless of who your attorney may have been, it was your testimony that you did not file such an action?

A. Well, I don't remember of doing it.

Q. Did you have a mortgage or some kind of a claim to the title to a White truck and a Walker trailer, Motor No. 140A16663, about that time?

A. Did I have a title to it?

Q. Well, either title or mortgage on it?

A. I didn't have a mortgage on it, I don't think.

Q. Can you take your income tax returns and from your deposition schedules tell whether you owned that truck at that time?

A. I have owned a White truck, but I don't know if that is the right motor number. I only owned one, and I presume that was the one.

Q. When did you own that one, Mr. Parker?

A. Well, I still own it.

Q. Was Mr. Stegmann using that White truck in 1949 and 1950?

A. Well, he could have in 1949. I don't [273] know.

Q. Was he using it on the Gopher Valley job in 1952? A. Well, I don't think so.

Q. Do you remember letting him use it?

A. When I owned it?

Q. Yes.

A. No, I never remember letting him use it when I owned it.

(Testimony of Chet L. Parker.)

Q. When did you acquire it?

A. I don't remember. I can look on my title and tell.

Q. Did you get it from Mr. Stegmann?

A. No.

Q. Well, then, you say that he may have used it. I do not understand that you have ever let him use it.

A. He may have used it previous to the time I got it.

Q. Before you got it?

A. Yes, might have been his. I don't know.

Q. When you made this \$22,000 loan did you have any understanding with Mr. Stegmann that the profit that he hoped to make from using that money would be applied to pay the note back?

A. Well, not only the profit, but I just expected that money back. I wasn't concerned with his business.

Q. It was my understanding he was going to buy some timber, and he hoped to make some money out of it.

A. Well, he would have made money in the original investment [274] at that. If he sold the timber, I wanted the money. I was not concerned with his profit. I wanted the principal back.

Q. Did you expect him to pay that back when he made the sales?

A. I expected him to pay me back.

Q. But not before a year?

(Testimony of Chet L. Parker.)

A. Well, I expected it by the time this thing came due. I expected every——

Q. You had no discussion with him, though, that as soon as he sold the timber he was to apply the profit to pay the note?

A. He may have indicated that to me, but I never insisted on it. I don't know whether he did or didn't, but he might have.

Q. Well, now, your giving him the money in cash, is it your testimony that that had nothing whatever to do with the fact that Stegmann at that time was broke and his creditors were on his doorstep?

A. You are telling me that he was broke, he had creditors on his doorstep? I am supposed to answer that?

Mr. Ryan: I object to that question, your Honor. There have been several times that this reference has been made, an assumption.

The Court: I will sustain the objection. Ask him in a little different form. You cannot assume facts that did not come out in the evidence. [275]

Q. (By Mr. Strayer): Your giving him the money in cash rather than by check or some other means had nothing to do with any information that you had about his financial situation?

A. It had nothing to do with it whatsoever.

Q. Did you know that he did not have a bank account at that time?

A. I didn't know whether he did or whether he did not.

(Testimony of Chet L. Parker.)

Q. What is this \$1,500 that was added onto this mortgage, \$1,500 loan, apparently made by Mrs. Parker on April 20, 1951? What do you know about that?

A. Well, I remember I was gone, and my wife made him a loan.

Q. What do you know about it?

A. Well, I don't—I don't know too much about it.

Q. Well, tell us what you do know about it.

A. Well, I remember coming home and that she had made an additional loan of \$1,500. She had a deal she had made some profit on, some deal, as I remember, and she felt that she could do with it as she pleased without asking me.

Q. Is that all that you know about it?

A. Well, I remember that because we had a little argument about it why she would loan him \$1,500 in my absence. I remember her telling me, "Well, it was my deal, and I just took half of the profit I made on the deal. I figured [276] your half you could keep, and my half I would loan Mr. Stegmann." I remember that.

Q. What was that deal, by the way?

A. I don't remember. I think it was a timber deal she had.

Q. Was it, by any chance, that Wrist transaction?

A. I believe it was.

Q. As a matter of fact, you learned of that Wrist timber deal from Mr. Stegmann, didn't you?

A. Yes.

(Testimony of Chet L. Parker.)

Q. He had an option on the deal——

A. Did I learn it from Mr. Stegmann?

Q. Yes.

A. No, I think my wife learned about it from Mr. Stegmann.

Q. Learned about the fact that he had a verbal option on the Wrist timber?

A. I don't know what he had. My wife would have to answer that, but that he knew about it, anyway.

Q. Well, you paid him some money for what interest he had in the timber, didn't you?

A. Well, she probably paid. I don't know whether she did or not. She might have paid him a finder's fee. I think she paid him a finder's fee.

Q. What is a finder's fee?

A. Well, that is quite a common practice. If a broker or someone finds some saw logs, some trees, why, you pay him [277] a finder's fee. It is quite common practice.

Q. Do you know how much she paid?

A. No; I think it was \$50.

Q. Is that the customary finder's fee?

A. Well, I always—there was always two prices, the one they want and the one they will take. The price, I think that was the price he would take.

Q. Your recollection is that she was so happy over making a profit on that transaction that she loaned half of the profit to Mr. Stegmann?

A. I think we had an argument about it when I came back, and she said, "Well, this half is my

(Testimony of Chet L. Parker.)

own, and you can take your half, and I have already loaned my half of the profit to Mr. Stegmann. You have got your half, so you should not be worrying about it." I remember her saying that.

Q. Was there any discussion, do you know, about what that \$1,500 was for?

A. No, I don't remember.

Q. Nobody, neither Mrs. Parker nor Mr. Stegmann, told you what the loan would be for?

A. Oh, they possibly did, but I was more perturbed about her loaning in my absence than anything else.

Q. By that time were you a little bit disturbed that the \$22,000 had all been spent and that Mr. Stegmann needed \$1,500 more? [278]

A. No; no, I was never perturbed about—I was not worried about getting the loan back, if that is the answer to your question.

Q. You never were worried about that?

A. No. Well, only I wanted that check to apply on the loan.

The Court: I did not hear that.

The Witness: I wanted the check to apply on the loan when I found out that the Sheriff had been down to the bank.

Q. (By Mr. Strayer): That is the first time you ever began to get worried?

A. Well, I was beginning to get worried then.

Q. Well, now, Mr. Stegmann borrowed that \$1,500 on April 20, 1951. Then it appears that the next thing he did was enter into this credit arrange-

(Testimony of Chet L. Parker.)

ment on May 1, 1951, only about ten days later.

Was there any connection between those two?

A. I don't think so.

Q. Tell us what conversation with Mr. Stegmann preceded that arrangement on May 1, 1951.

A. As I remember, he said that he did not care to pay interest on money, just borrow money and pay interest on it. He had heard of this arrangement that whereas he would be allowed a fund to write checks on, and he would pay interest, and we were figuring the interest as to the actual money he used, and when he paid it back, why, it would be figured out of it.

Q. Did you say he had heard of this [279] arrangement?

A. As I remember, he mentioned he had heard of this arrangement previously.

Q. That is, he had heard that that could be done?

A. Yes, it was more or less of a proposition.

Q. How much money did he say he would need in the way of credit?

A. It would not be over \$10,000.

Q. What did he need that credit for?

A. He was going to deal in timber, as I remember.

Q. Did you take the precaution of inquiring about what had been done with the \$22,000, how that had been invested?

A. Well, he indicated, as I remember, that he had purchased some land up in Pea Vine, other places.

(Testimony of Chet L. Parker.)

Q. Did he say he had purchased some land on Pea Vine, and what other place?

A. Well, he told me the other places, but I don't remember the names.

Q. He gave you a list of them, you mean?

A. No, he didn't give me a list of them, just casual conversation.

Q. But he accounted for how he had spent \$22,000?

A. Well, tentatively, in a broad sense of the word.

Q. Did he tell you what he had done with the \$1,500?

A. Not that I remember. I think he had a specific place for it, or my wife probably would not have loaned it to him, [280] but I am not sure about that. She loaned the money; I didn't.

Q. Who thought of this interest arrangement whereby he was to write checks both on his own account, but those checks were to be charged to your account?

A. Well, I didn't understand it to be to his account. It would my account, and I would pass on them. It was more or less his idea. He had heard about it somewhere.

Q. He thought up the whole thing?

A. Well, he heard about it. He asked me if I would be willing to do such a thing. I told him, "Yes."

Q. You told him that was okeh?

(Testimony of Chet L. Parker.)

A. Well, I thought about it a little bit. It sounded all right.

Q. Did you go down and talk to the bank about it?        A. I don't believe I did.

Q. Did you ever talk to anyone in the bank about that arrangement?

A. I told them when a check would be written Mr. Stegmann would notify me, and I would notify the bank to pass the check.

Q. But you never had any formal understanding with them about how that would be handled?

A. I don't believe that I did.

Q. As I understand it, your arrangement was that when [281] Mr. Stegmann would make out a check to anybody he would make out a personal check of his own, sign his name to it; he would then call you on the phone and say, "I have to deliver a check from so-and-so in such-and-such an amount payable to so-and-so. Would you please call the bank and say, 'Honor that check' "; is that what happened?

A. That is right. Then I would call them, or else, of course, my wife or I.

Q. I would assume if you had a rather tight situation on time, you had to go practically with each other in a hurry before the check reached the bank or it might bounce?

A. Well, I wasn't perturbed about it.

Q. Well, it is not a question of whether you were perturbed. I mean, you did have to go and

(Testimony of Chet L. Parker.)

check fairly soon after the check was delivered, did you not, in order for that always to work?

A. That was his problem, not mine.

Q. What I say is true, though, isn't it, Mr. Parker?

A. Well, sometimes it seemed like he wrote a check that did, would go by. I am not sure about that because I remember the bank holding one for a day or two.

Q. The bank would not pay one of those checks without your passing it, would it?

A. No, because they had one or two down there, as I remember, that they were holding, so they certainly would not pay it [282] without my——

Q. Which checks were those, do you remember?

A. I don't remember specifically.

Q. When did that happen?

A. I don't know when that happened exactly.

Q. Let's get the original notes.

May we have these marked, your Honor, as Exhibit 36-A, which has been taken from the Parker deposition, Exhibit 4.

Mr. Jaureguy: Taken out of the envelope marked Exhibit 75.

(Documents, Agreement dated May 1, 1951, and Note of May 1, 1951, were thereupon marked Plaintiff's Exhibit 36-A for Identification.)

Q. (By Mr. Strayer): Exhibit 36-A which you have in your hand is a promissory note for \$10,000

(Testimony of Chet L. Parker.)

and the mortgage which were signed by Mr. Stegmann on May 1, 1951, are they not?      A. Yes.

Q. Who prepared that mortgage?

A. Well, this agreement here, yes, she gave it, my wife prepared that.

Q. Was that in a conference with you, Mr. Stegmann and Mrs. Parker, all three of you together, when that was typed [283] up?

A. As I remember, yes, I was in complete agreement with it.

Q. What discussion did you have on what security he might have to secure this note?

A. Well, he had this equipment here and then plus a note.

Q. You asked him what security he had for the note, did you?

A. Well, I asked that for the note. I wasn't perturbed too much about security for the note. The note itself was security.

Q. You were perturbed enough so that you went to the trouble to make out the mortgage, were you not?

A. Yes, and that agreement, these two items, also.

Q. You were sufficiently concerned so that you fixed up an agreement of some property as security for that note, is that right?      A. Yes.

Q. Then you must have discussed with Mr. Stegmann what property he had to use as security?

A. Well, he said he had these—he gave those for security, and I took them.

(Testimony of Chet L. Parker.)

Q. And the equipment that he put up was two Carco towing winches and one 'dozer blade?

A. Yes.

Q. What did you know about that [284] equipment?

A. Well, as I remember, these were up to his ranch, or his ranch or their ranch, whatever ranch it was.

Q. Did Mr. Stegmann have a ranch?

A. I don't know whether he had it or his folks had the ranch.

Q. Had you seen this equipment before this arrangement was signed? A. Yes, I had seen it.

Q. How long before?

A. Oh, probably a month or two before.

Q. You considered that as adequate security for the note, did you? A. I felt it was all right.

Q. About the \$10,000—

A. It would crowd \$10,000.

Q. What is that?

A. It would crowd \$10,000. I figured the note itself was security, and whatever assets he would have, why, then, I could—the note would put a claim on it over and above what I had noted in this agreement.

Q. Well, there again, did you inquire whether he had any additional security that might be a little more satisfactory?

A. Well, it was common knowledge that he had stuff all over the country, everywhere, lines and rigging and stuff, scattered all over the country. It was very common knowledge. [285]

(Testimony of Chet L. Parker.)

Q. Was it also common knowledge that that equipment was mortgaged up to the tune of eighty or ninety thousand dollars?

A. Well, it was not to my knowledge that it was mortgaged to any eighty or ninety thousand dollars.

Q. You say that you never troubled to check at the County Courthouse to find out just what mortgages there were of record down there?

A. No, no; I would not even know where to check at the County Courthouse to find out, if I wanted to.

Q. Was there any reason why that agreement or mortgage, or whatever it is, why that was not recorded?

A. Well, I just never recorded any very nominal amount of instruments.

Q. Did you know on that date, on May 1, 1950, that Mr. Stegmann was in financial distress?

A. What do you mean by that, financial distress, he was broke?

Q. Well, did you know that he was in any trouble at all financially?

A. Well, being a logger, they are generally always in trouble financially.

Q. Did you know that he owed bills that he could not pay?

A. Well, if he had any bills, he should have been able to pay them. [286]

Q. He should have plenty of money, you mean?

A. Well, I would think so.

Q. You thought that he was in good financial condition?

(Testimony of Chet L. Parker.)

A. I thought he was good enough to run this agreement. I certainly didn't consider him broke by any means.

Q. Did you know at that time whether he had a bank account there at McMinnville?

A. No, I didn't know whether he did or didn't. He used to bank at Sheridan, as I remember.

Q. He also used to bank at McMinnville, didn't he?

A. I don't know that he ever banked at Mack.

Q. Didn't he bank there during the Gopher Valley transaction?

A. I don't think he did. I don't know whether he did or didn't. I didn't ask him. I don't think he ever told me.

Q. Didn't you ever discuss with him the idea on this loan arrangement that you could arrange with the bank to transfer funds from your account over to Mr. Stegmann's account and in that way honor checks on his account?

A. No; this proposition was given to me, and it sounded all right to me.

Q. It never occurred to you that you might be misleading somebody by having checks going through there honored by the bank and signed by Stegmann, that you might mislead them into a belief that he was a person of financial stability?

A. No, there certainly was no deceit as far as I was concerned [287] in making this arrangement, or my wife, with anyone.

(Testimony of Chet L. Parker.)

Q. You knew, did you not, that when one of those checks went through and came back and the check was honored that whoever had one of those checks was going to have an impression that Mr. Stegmann had an account in that bank?

A. Well, I had never gave it much thought one way or the other.

Q. Well, now, will you look over this exhibit, Mr. Parker, and tell me what advances were made pursuant to that arrangement? Are there some notations on there from which you can tell us?

A. Well, it says, "3 checks, \$2,850, in by May 14; interest \$150," showing a total of \$3,000. "Credit, \$2,300 balance of check to \$22,000." Then there is a credit of \$140, "Interest on \$22,000."

Q. Are those your checks or Mrs. Parker's?

A. No, they are Mrs. Parker's.

Q. Do you know what the meaning of those endorsements is? Can you reconstruct it from that?

A. Well, it looks like he paid her some interest, and he paid her \$3,000 back.

Q. Well, do you recall what the three checks were? A. No, I don't recall.

Q. Well, then, let me hand you—I will hand you Exhibits 38-A and 39-A and direct your attention first to Exhibit [288] 39-A. I think these are also in the pre-trial exhibits. I hand you 39-A first, Mr. Parker. Will you look those over and say, if you can, whether the checks are the three checks referred to on the endorsement on the back of the note?

(Testimony of Chet L. Parker.)

A. Well, it might be. It figures out the same. On May 14th; these checks are dated May 14th.

Q. Do you know what those checks were for?

A. Well, I know now what they were for.

Q. Well, didn't you know then that he was buying the Johnson property?

A. No, I didn't know specifically—I thought I knew what they were for all right.

Q. Did not Mr. Stegmann tell you that he had bought a piece of timber from Mrs. Johnson and that he had made out a check in that connection for \$2,500 to Mrs. Arthur Johnson and to please notify the bank to honor the check?

A. He said he was buying timber up in the Rex Hill area, and he told me the number of the check. I remember distinctly that the number was very important, and the name, of course.

Q. Why did he say that the number was very important?

A. Well, the number to him was important, apparently, because he gave me the number. He says, "I am going to issue a certain numbered check," and gave me the name, and that is what I, in turn, gave the bank to honor against this agreement [289] for it.

Q. All three of these checks were honored against the agreement, were they not?      A. Yes.

Q. And attached to these three checks is a memorandum slip dated May 21, 1951, addressed to you, apparently: "Chet: Enclosed find all three checks drawn by Walter Stegmann," and signed by Mr.

(Testimony of Chet L. Parker.)

Gunness, is that?           A. Mr. Gunness, yes.

Q. It looks like Gunness, G-u-n-n-e-s-s. Is there a Mr. Gunness at the bank?

A. Yes, I think there is Tom Gunness there at the bank.

Q. Then a footnote: "I have canceled these checks." That came to you from the bank with these three checks, did it?

A. I think maybe he handed it to me. I can't think back, anyway.

Q. Well, then, in addition to that—will you hand the witness Exhibit 38-A. These are photo-stats, are they not, of the two checks that were given to the Winans in payment of \$1,000 down payment on the option, and the \$4,000 payment on August 17; is that right?

A. Yes, it appears that way.

Q. Both of those checks were also carried on this loan arrangement, were they?           A. Yes. [290]

Q. Now, as of May 14, the endorsements on the note indicate that there was due \$2,850 on the payment to Mrs. David and Mrs. Arthur Johnson for \$150 interest, or a total of \$3,000. Do you know when that was paid back?

A. No, I do not, but it says, "Credit of \$2,300, Interest \$140," and I see that the note was canceled.

Q. Canceled on September 20, 1951, was it not?

A. Yes.

Q. Which was the date that you gave the \$25,000 check back; is that right?

A. Yes, it says, "All checks paid in full to date."

(Testimony of Chet L. Parker.)

Q. The endorsement also indicates that they paid \$26.25 interest when the check—when the note was canceled, was it not? Is there not an endorsement?

A. Yes.

Q. Now, you have no information on when that original advance in May of 1951 was paid?

A. No.

Q. Whether it was paid before September 20th or not you don't know?

A. I don't know whether it was or was not, but I think it was.

Q. What bank account did you have there at the McMinnville Bank, Mr. Parker? Did you have more than one bank account?

A. Yes. [291]

Q. In what names were the accounts carried?

A. Well, Chet or Lois Parker and Phillips Construction Company.

Q. What was Phillips Construction Company?

A. Oh, it was a company I was going to form for construction purposes.

Q. Was that company owned solely by you?

A. Yes.

Q. So Phillips Construction Company was an assumed business name that you used sometimes, is that right?

A. A very short time, never actually used it, only—never actually used it. I was going to use it. We set up this fund to go ahead and form the company.

Q. How did you write checks on the Phillips

(Testimony of Chet L. Parker.)

Construction Company account? How did you sign them?

A. I just signed them like I signed any of the rest of them.

Q. Just "Chet L. Parker"? A. Yes.

Q. Or your wife could sign on that account, could she, by just signing "Lois Parker"?

A. Yes, I think she could sign on that, too.

Q. Well, now, how could the bank return that check, to which account when the check would be presented?

A. Well, I really don't know. I suppose if I ran out of money on the one they would use it out of the other one. [292]

Q. How does it happen in this particular case that all of the—I think I am correct in this, am I not—that all of these advances on this loan arrangement were charged to your Phillips Construction Company account.

A. Well, of course, you are telling me something that is news to me.

Q. You do not know that?

A. I don't know anything about it.

Q. Well, I could be in error on it.

(Discussion off the record.)

Q. I think I may be in error on May, but I will hand you the bank statement from the First National Bank of McMinnville for the month of August, 1951, which is marked Exhibit 42. Does that appear to be a photostatic copy of your bank

(Testimony of Chet L. Parker.)

statement for the month of August on Phillips Construction Company account?

A. Well, it says from August 9th to August 27th.

Q. Yes. Now, will you look on there and tell me if it is not true that the thousand-dollar check to Winans and the four-thousand dollar check to Winans and also the \$95,000 check to Winans for which a cashier's check was purchased are all charged to your Phillips Construction Company account?

A. Well, I don't seem to find the \$95,000 here.

Q. Look on the second page.

A. Oh, I am sorry. This is in September, the next page. [293]

Q. Is the next page in September? I thought it was the last of August.

A. Well, maybe so; I don't know.

Mr. Jaureguy: No.

The Witness: But I see a \$95,000 one here on September 10, 1951.

Q. (By Mr. Strayer): Well, now, state, if you can, if it is not true that all three of those withdrawals were charged to the Phillips Construction Company account?

A. Well, it indicates so on this thing.

Q. Do you know how that happened that you used that account on this Winans transaction?

A. No, I don't know how they would use either account other than I issued the check on them, and they would naturally have to have their money.

Q. Look on the front page of that statement

(Testimony of Chet L. Parker.)

again, and I will ask you if it is not a fact that on August 9, 1951, you transferred from your personal account to the Phillips Construction Company account \$100,000?

A. Both of these were personal accounts.

Q. All right. Well, let us not talk about the terminology. Let us forget about that. Is it not a fact that you transferred \$100,000 on August 9th from your account held in your name and Mrs. Parker's to an account held in the name of Phillips Construction Company? [294]

A. Yes.

Q. What was the reason for that transfer?

A. I suppose we ran short of money in that account.

Q. What was the balance at the time that that \$100,000 was transferred?

A. I don't know.

Q. Let me call your attention to the fact, Mr. Parker, that you had no money at all in the Phillips Construction Company account until that transfer was made. Look at the top of your statement and see if that is not correct?

A. Well, I don't know how it would indicate that.

Q. What was your balance on August 9th after the deposit was made, according to the statement?

A. I don't know what it was. It does not say.

Q. What does the statement say you had on deposit in the bank on August 9, 1951?

A. It does not say.

Q. I assume that you are familiar with bank statements, Mr. Parker?

(Testimony of Chet L. Parker.)

A. I very seldom look at them.

Q. Does not this right-hand column over here, does not that indicate the balance that you have on deposit on the dates indicated?

A. Well, if it does, why, August 9, 1951, I had a hundred thousand dollars. [295]

Q. Yes. Now, how long had it been since that account had been active before August 9th?

A. I don't know, but from the time it was active it has continued active, I think, up until—maybe it still is. I don't know.

Q. Is it your recollection that that was an active account during the month of July, 1951, we will say?

A. Yes, I think it was active.

Q. It just happened that you checked that amount out, and the bank then had it transferred, \$100,000, to make it an active account?

A. I don't know. My wife took care of all that. I just can't say.

Q. Did that transfer of \$100,000, by any chance, have anything to do with this Winans transaction?

A. No, no; the Phillips Construction hundred thousand dollars, as far as I am concerned, didn't have anything to do with Winans whatsoever.

Q. Let me call your attention to your testimony in your deposition, on page 161. Do you still have the deposition there? Page 160, at the bottom.

“Q. I notice that Exhibit 15, which is the two statements of your personal account, shows a withdrawal of \$100,000 on August 9th and the deposit

(Testimony of Chet L. Parker.)

of \$100,000 in the Phillips Construction [296] Company account on the same date. Was there any particular reason for that transfer?

“A. I don’t know. I don’t recollect. My wife took care of all of that. I suppose so the other one would have some money.

“Q. Was that withdrawal made in contemplation of this Winans timber purchase?

“A. Possibly.”

Did you give that testimony? A. Yes.

Q. Is it true that possibly the transfer had something to do with this Winans transaction?

A. Well, it is possible that she wanted it to be drawn against the Phillips Construction Company instead of the Chet L. Parker account.

Q. Is it possible that you knew about this pending Winans deal on August 9th?

A. Well, I don’t see how I could have known about it August 9th.

Q. Pardon?

A. I don’t think I should have known anything about it August 9th. I don’t know which August 9th we are talking about, 1951; is that right?

Q. That is right. Do you remember having a conversation [297] with Mr. Rich, your accountant in Salem, also on August 9th? A. No.

Q. You have no recollection at all?

A. No.

Q. Why would you have called Mr. Rich at Salem on that date?

A. I don’t know why I would or I don’t know why I wouldn’t.

(Testimony of Chet L. Parker.)

Q. For what purposes did you make calls to Mr. Rich?

A. Income tax and advice on this and that.

Q. Did you look to Mr. Rich for advice on tax matters rather than to an attorney?

A. Rather than to an attorney?

Q. Yes.

A. Well, somewhat, yes, but not advisement.

Q. Had you by any chance called Mr. Rich on August 9th in order to ask about the tax aspects of this trust arrangement to your son?

A. I don't know whether I did or not.

Q. Did you discuss this Winans transaction with him on August 9th?

A. I don't know whether I called him on August 9th, so I wouldn't know whether——

Q. Let us get the material on that. Exhibit 57, these are all in one Exhibit, Exhibit 57.

Mr. Buell: I believe perhaps this would be a good time to straighten the record on these two calls. The telephone [298] records of the West Coast Telephone Company of McMinnville over numbers 4984 and 4982 were all marked as Exhibit 57. I have since separated the toll slips into each one, A and B. We will make 57-A the toll calls on No. 4982 and 57-B the toll calls on No. 4984.

Q. (By Mr. Strayer): Referring, then, to 57-B, toll calls from——

The Court: I think you had better have them marked.

(Testimony of Chet L. Parker.)

(Group of toll slips of West Coast Telephone Company for No. 4982 was thereupon marked Plaintiff's Exhibit 57-A for Identification.)

(Group of toll slips of West Coast Telephone Company for No. 4984 was thereupon marked Plaintiff's Exhibit 57-B for Identification.)

The Court: It is 12:00 o'clock. It seems to me you are going to get into a new subject matter. Recess until 2:00 o'clock this afternoon.

(Noon recess was thereupon taken.) [299]

#### Afternoon Session

(Court reconvened at 2:00 o'clock p.m., pursuant to adjournment, and further proceedings herein were had as follows:)

#### CHET L. PARKER

thereupon resumed the stand as a witness in behalf of the Plaintiff and Third-Party Plaintiff and was examined and testified further as follows:

#### Direct Examination

(Continued)

By Mr. Strayer:

Q. Mr. Parker, you have told us this morning that you had a home down at McMinnville or you owned a home there while you actually made your residence in Vancouver at the time of this Winans

(Testimony of Chet L. Parker.)

transaction. Was your home in McMinnville rented to anybody?

A. I don't remember whether it was or wasn't.

Q. Were you staying at your home that you owned down there in the month of August, 1951, when you were down at McMinnville?

A. Well, we would stay there once in a while.

Q. Pardon?

A. We would stay there once in a while.

Q. Did you stay in your home at a time when it was rented?

A. I don't remember staying, sleeping, in the home when it was rented.

Q. Did you at some time or other in 1951 rent the home [300] there?

A. I am not sure we did.

Q. Have you ever rented your home?

A. Pardon me?

Q. Did you ever rent the home?

A. Yes, I think we rented it once. We had two homes there—I don't know which—I mean, there is two dwelling buildings on the property. Are you referring to both of them or just one of them?

Q. I didn't know that you had two. You owned two different houses in McMinnville?

A. Yes, there was two on the same property; there was two houses.

Q. Did you rent them both at any time?

A. We had at various times, we had it rented. Sometimes we lived in one; sometimes we would

(Testimony of Chet L. Parker.)

live in the other one temporarily, all night or a day or two.

Q. You kept them both furnished, did you?

A. I think so; partially, let us say, with no stove in it.

Q. Did you have a telephone at both of the houses or in either of them?

A. I think so. We had a phone at one of them, I know. I don't know whether we had one at the other one or not.

Q. Well, do you have any way of telling where you stayed when you were down in McMinnville during the month of August, [301] 1951?

A. All of August, 1951?

Q. Yes.

A. Well, apparently I didn't stay at McMinnville all of August, 1951.

Q. I did not say you did. At any time you were in McMinnville do you have any record of where you stayed or any way of determining?

A. Other than reading my notes here.

Q. Well, do you have some notes that might refresh your memory on that? I don't recall anything in the portion of your diary that we referred to that makes any mention of where you stayed at night in McMinnville. If there is, I would like you to refer to it.

A. Well, on 8/27/51.

Q. Pardon?

A. On the 8th month, 27th day, of 1951 I say, "Completed the deal of buying Floyd out today at

(Testimony of Chet L. Parker.)

Marsh & Marsh, McMinnville. Then drove to The Dalles."

Q. Well, is there any indication at what house you stayed in at McMinnville that day?

A. No.

Q. Do you have any record of where you stayed on August 9th when you were at McMinnville?

Mr. Jaureguy: I think Mr. Parker is looking at some of [302] the diary of the August 9th portion of the diary. It is not in evidence or in the courtroom.

Q. You do not have that with you?

(Discussion off the record.)

Q. (By Mr. Strayer): Your wife informs me the diary indicates you stayed at Grand Ronde on the night of the 8th but no indication of where you stayed August 9th. Her information indicates that you probably stayed at Grand Ronde on the night of the 8th but no indication of where you stayed on August 9th. I take it, then, you have no way of fixing where you may have stayed on August 9th?

A. No, I certainly can't remember.

Q. Did you ever stay with your brother, Oscar Parker, down there?      A. Yes, sometimes.

Q. Is it possible that you might have stayed with your brother, Oscar Parker, on August 9th?

A. It is possible, yes. I don't remember of the occasion.

Q. I beg your pardon?

(Testimony of Chet L. Parker.)

A. I just don't remember that August 9, 1951, that I stayed at my brother's house that night.

Q. Of course, I am talking about August 9th because I am interested in this telephone call to Mr. Rich on August 9th which the Exhibit indicates—and I think you and your lawer have seen the Exhibit—indicates a call from Oscar [303] Parker's number in McMinnville to Lawrence Rich at Salem on August 9th. Now, is it possible you may have placed that call from your brother's phone?

A. Yes, it is very possible.

Q. I do not know whether you have seen that particular slip or not. I will ask the Crier to hand it to you. This is part of Exhibit 57-A, the top slip, Mr. Parker.

I am correct, am I not, in stating that it appears to be a memorandum of a call from your brother's home in McMinnville to Mr. Rich on August 9th, 1951?      A. Yes.

Q. Did you have any other loan arrangements with Mr. Stegmann other than the ones that we have talked about here?      A. I believe so.

Q. Before you tell us about them, perhaps we had better see if we can summarize the ones we have talked about, the \$22,000 note on November 20, 1950, the \$10,000 credit arrangement in May of 1951, the \$1500 advance on the \$22,000 mortgage arrangement which was in April of 1951.

I think those are all, are they not, that we have been talking about so far?

A. No, I don't think that is all of them, but that

(Testimony of Chet L. Parker.)

seems to be all I have a record of right here at my disposal.

Q. Well, suppose you go ahead and tell us about what other ones you may have had. [304]

A. Well, I had—I loaned him some money to rock a road into Gopher Valley one time.

Q. You loaned money to whom?

A. I loaned money to Mr. Stegmann to rock a road into Gopher Valley; not into Gopher Valley, but in that vicinity of Gopher. I loaned him some money to rock his road.

Q. What year was that? Was that in 1949?

A. I don't remember what that was.

Q. Let's see if we can get them listed, and then we will get back into the transaction. Gopher Valley would be—was that that loan of \$6,000, Mr. Parker?

A. I believe it was. We have submitted in evidence the——

Q. Yes; well, we will go into the Exhibits, but would that be approximately that \$6,000 loan there?

A. I don't know the amount.

Q. All right.

A. I think it was more than that.

Q. All right. Now, what others were there?

A. Oh, it seems like I loaded some logs, or my brother did at one time. He owed me three or four thousand dollars on that.

Q. I don't understand your testimony. You say you loaded some logs for your brother?

A. I think my brother loaded some logs for him with my equipment. [305]

(Testimony of Chet L. Parker.)

Q. Your brother loaded some logs for Stegmann with your equipment?      A. As I remember.

Q. What did that involve in the way of a financial transaction with Stegmann?

A. Well, I would say between three or four thousand dollars.

Q. Money that Stegmann owed to your brother?

A. Yes. Well, indirectly he owed it to me. It was my equipment. My brother was taking care of the job.

Q. It was really your job, do you mean?

A. Pardon me?

Q. You mean it was really your job, that your brother was supervising it?

A. Well, it became my job finally.

Q. How did it become your job?

A. Well, they had an agreement with my brother instead of me, to start in with, verbal agreement. Later it became involved with me.

Q. Did that involve a loan to Stegmann or the payment of some of Stegmann's debts?

A. Well, yes, I took a mortgage on his house in lieu of them.

Q. And you, in turn, paid your brother?

A. Well, as I remember, I paid my brother.

Q. Would that be in 1949, do you think? [306]

A. I don't know what year it was, somewhere in there.

Q. All right. Now, what other financial transactions have you had with Mr. Stegmann?

A. Directly or indirectly, or how?

(Testimony of Chet L. Parker.)

Q. Either way.

A. Well, he loaded some logs for Willamina Lumber Company off from my properties sometime.

Q. You loaded some logs?

A. Yes, for Willamina Lumber Company. I owned the logs. They were my logs. It was on property I did not own, but I had a right to be there. He loaded logs for Willamina Lumber Company, but they were my logs.

Q. Did they involve some financial transaction between you and Walter Stegmann?

A. Well, indirectly, why, it was figured—the amount of money I would receive for the logs at the price he would load them for, it was very indirect, but we did have a contact.

Q. Well, let us see now, You mean you had some logs which you sold to Willamina Lumber Company; right?

A. Yes.

Q. And Walter Stegmann loaded those logs and hauled them in, did you say, or just loaded them?

A. I don't know whether he hauled them in or not, but I know he loaded them. [307]

Q. Who paid Stegmann for the loading of the logs?

A. Willamina Lumber Company did.

Q. They paid him direct, and then in turn was that deducted from the amount that you received for the logs?

A. Yes.

Q. About when was that?

A. Oh, I don't know. It might have started in

(Testimony of Chet L. Parker.)

somewhere, oh, I don't know, 1948, 1949, somewhere in there. I am not saying exactly 1948 or 1949.

Q. 1948 or '49? A. But it was thereabouts.

Q. Could it have been before 1948?

A. Well, it is entirely possible.

Q. What others were there?

A. Well, that seems to be about all I can remember just sitting here. Do I have to remember all of them right now?

Q. Well, I am not going to be mad at you if you do not. I want a list of all that you can remember, and, no doubt, you will have a chance to think this over during the recess, and maybe you will remember some more.

You have listed all of the deals, now, that involved any exchanges of money between you and Walter Stegmann; right? Either you paying him or he paying you any money?

A. Well, have I mentioned the Rutherford deal?

Q. With the exception that you may have mentioned another [308] one.

A. Oh, yes, did I mention the Rutherford deal? I have forgotten.

Q. The Rutherford deal was tied in with your Gopher Valley, was it not?

A. Well, yes, there was two or three deals on the Gopher Valley deal, and Rutherford was one phase of it, I guess you would say.

Q. Yes. Well, I considered the Rutherford deal as a part of the Gopher Valley. Now, I am interested in finding out from you all of the transactions which

(Testimony of Chet L. Parker.)

involved your paying any money to Walter Stegmann or him paying any money to you, and these are all that you remember at the present time, the ones that you have listed?

A. That is all I remember now.

Q. Have you included in my questions—in your answers to my questions have you included any instances where you may have paid Walter Stegmann money as wages for any services?

A. Was that any wages I would have paid him; that is supposed to be included in the question?

Q. Yes.

A. Well, I paid him on this Winans transaction.

Q. I am excluding the Winans transaction.

A. On the Gopher Valley deal I believe he had—there again we are back to that Gopher Valley deal.

Q. I think you testified this morning that you thought that [309] you might have paid a finder's fee on the Wrist timber?

A. Yes, I think I paid him a finder's fee on that.

Q. All right. Now, were there any other cases where you may have paid him any money for any services performed?

A. It seems like I paid him to run a loader one time for me; I am not sure.

Q. Running your loader?

A. Yes, but I am not sure about that.

Q. When would that be about?

A. I think I purchased the loader in 1949 and

(Testimony of Chet L. Parker.)

got rid of it in 1941 or '2. It would have to be during that time before——

Q. Did you say 1939 and '41 or '2, or did you mean 1949 and '52?

A. '49 sometime to '51 or '52 I sold it. During that time I think, but I am not sure, that he might have operated it or took care of it. It was quite a large piece of equipment.

Q. That would be, I suppose, in connection with a logging operation which you were conducting?

A. I think I was conducting that portion of it.

Q. He was then an employee of yours at that time operating a loader?

A. Well, I am not sure he was, but he could have been, but it is very dim in my memory.

Q. If you paid him for renting a loader, I assume he was hired and on your payroll, was he not? [310]

A. Well, it would show on the payroll record. It is very dim. I am trying to remember everything on this, every instance. It is very dim, but I think before, it seems like that he did run a loader for me, but I am not absolutely certain.

Q. All right. Do you think now you have given us all of the cases that you can remember where you may have paid him for any services?

A. As I sit here, it is all that I can think, all that I can remember.

Q. Have you ever, at any time have you ever had any arrangement with Stegmann in regard to the purchase of timber tracts? Have you ever had

(Testimony of Chet L. Parker.)

any arrangement with him whereby he would try to locate timber for you?

A. No, not locate timber for me, for the purpose of myself purchasing it or something like that?

Q. Yes.           A. No.

Q. So you have never paid him—I am excluding now the Wrist timber where you did pay him a finder's fee—I take it that was not pre-arranged, however?

A. No, that was not pre-arranged at all.

Q. There has never been a case where you said to Mr. Stegmann, "Go out and see if you can find a tract of timber; let me know about it, and maybe I will buy it," never anything like [311] that?

A. There was no arrangement. I quite frequently tell someone, "If you know of a piece of timber, let me know about it." In fact, just every day almost I tell someone.

Q. Well, did you ever tell Stegmann that?

A. It is very possible I did.

Q. Did you ever pay him a finder's fee at any time except on the Wrist tract?

A. That is all that I remember anything about.

Q. Well, now, on the other end of it, on the selling end, did you ever ask Mr. Stegmann to do anything for you with relation to the sales of any timber?

A. Being a salesman for the timber?

Q. Well, I don't care about the terminology. Did he ever do anything on your behalf in the selling of any of your timber?

(Testimony of Chet L. Parker.)

A. Yes, in this Winans tract he went up and showed Mr. Kenny or was supposed to have shown him, the corners, quarter corners.

Q. That is the occasion when you paid him \$20 to show Kenny the quarter corners?

A. That is right.

Q. Were there any other occasions?

A. I think he took also Mr. Kenny into Bear Creek. I am not sure he did, but I think he did.

Q. Was that for the purpose of interesting Mr. Kenny or his company in buying the Bear Creek timber? [312]

A. No, he was supposed to show him the corner and the lines.

Q. Was Mr. Stegman paid for that service by you? A. I think he was.

Q. All right. Were there any other occasions?

A. Yes, I think—well, I am not sure.

Q. You are not sure whether there were any others or not? A. No, I am not.

Q. You do not remember any at the moment now concerning these lines?

A. The corners, he was more familiar with that stuff than I was.

Q. By the way, when did he show Mr. Kenny the Bear Creek timber?

A. I don't know; before they bought it, no doubt.

Q. When would that be?

A. When they bought it?

Q. Yes. A. I suppose in 1951.

(Testimony of Chet L. Parker.)

Q. Did you ever pay Mr. Stegmann any commission on any timber sales that he ever made?

A. No, not in the sense of a commission.

Q. Pardon?

A. Not in the sense of a commission.

Q. Did you ever pay him anything in part—in compensation in connection with the sale of timber which he made? [313]

A. Not on the sale of timber, no.

Q. I notice in your income tax return that you list an expense item which includes commissions on sales. Can you tell what that was?

A. Well, I have not got it here so I would not be able to tell you.

The Court: It is only a small item of \$205; in other words, commissions on timber sales, cruising, and contract labor—\$12,000.

Mr. Strayer: \$12,000.

The Court: \$12,000. Show it to the witness.

The Witness: I do not seem to find it. What are you talking about?

Mr. Strayer: May I approach the witness?

The Court: Yes; everybody may approach the witness in the interest of speeding up the case.

Q. (By Mr. Strayer): What is that (indicating on document)?

A. Oh, wait a minute. Oh, yes.

Q. The question is, the Item 1, of your income tax return for 1951, Commissions on Timber Sales,

(Testimony of Chet L. Parker.)

Cruising, Contract Labor, \$11,205.98; do you know whether that includes amounts paid as commissions for the sale of timber?

A. Well, the \$11,205.98 does not segregate cruising of timber of which I had considerable, no doubt, and contract labor, no doubt, would have been considerable, and it does [314] not make it clear here to me what the commission on timber sales—whom it was to and how much it was.

Q. It is not clear to me, either, Mr. Parker. Do you have any recollection of paying any commission for timber sales?

A. It seems like I did pay commission to one man for a timber sale.

Q. Who was that?

A. Well, it was a sidewalk broker. Let's see. I can get my notes. I think it will tell about it.

Q. It was not Walter Stegmann?

A. No, it was not.

Q. As you recall, there was only one occasion where you paid any commission?

A. As I recall, yes.

Q. Look on Page 4 of your income tax return, the list of Sales of Capital Assets. Can you identify from that the occasion on which you paid a commission on a sale?

A. I think I paid a real estate broker some money on the Clackamas River property, for one. I am not sure I paid him that year, but I think I did.

(Testimony of Chet L. Parker.)

Q. The Clackamas River property, was that timber or a home?

A. It had some trees on it, but it was potentially a home.

Q. That is the occasion that you refer to when you paid a commission on a sale?

A. No, that would not be the only one, but I remember that [315] one.

Q. Do you remember any others?

A. I remember this sidewalk broker, paying him a commission.

Q. That was on the sale of a timber tract?

A. Yes, it was.

Q. Can you identify which timber tract it was?

A. I think it had to do with the Cottrell timber.

Q. That is the one up in Clark County, Washington, is it?      A. Yes.

Q. Do you remember who that was that you paid that commission to?

A. I don't remember his name, but I gave him a check, I think, for it.

Q. Did he find a buyer for you on that?

A. Yes.

Q. Who was the buyer?

A. As I remember it, it was Weedman Lumber Company.

Q. As a matter of fact, was not Mr. Stegmann showing that same property to the Weedman Lumber Company?

A. You mean showing it to sell it to them?

Q. Yes.

(Testimony of Chet L. Parker.)

A. No, he was not supposed to. I don't know that he was, but he was not supposed to.

Q. You don't know whether he did?

A. I know he was up to show them the lines and the corners, [316] but he was not showing it to them as a salesman to sell it to them.

Q. Well, did you send Mr. Stegmann up to show the Weedman Lumber Company the lines and the corners on the Cottrell tract?

A. As I remember, I believe I did.

Q. Did you pay him for that service?

A. I think I did.

Q. When would that be?

A. Well, I suppose in '51.

Q. When was the sale of the Cottrell tract? Your income tax return shows it, does it not?

A. I don't know; '51, I guess, or '52.

Q. Well, you sold it in two separate tracts, apparently, on April 9, 1951, and March 15, 1951; is that correct?

A. I suppose.

Q. Your recollection is that you sent Stegmann up to show the Weedman Lumber Company lines and the corners.

A. Yes, I believe I did.

Q. That is all he was supposed to do?

A. He certainly was not to sell it to them.

Q. He was not supposed to aid in any way in the sale?

A. No, other than to show them the lines and corners.

Q. Were you offering that property to anybody else?

A. Oh, I probably was.

(Testimony of Chet L. Parker.)

Q. Do you remember anybody else that the property was [317] shown to?

A. No, not right now I don't; no.

Q. Do you recall Mr. Rutherford going up to look at it?

A. No, but it seems like I called him on it, though.

Q. Does it not also seem like he went up there to look at it?

A. Well, I don't think I was with him, and I don't know.

Q. Well, don't you know, as a matter of fact, Mr. Stegmann was with him?

A. Well, I don't remember that Mr. Stegmann was with him or was not with him. I showed that property, as I remember, to, oh, possibly a hundred people, and certainly it is hazy in my mind just who went where what date, or anything about it.

Q. Did you tell Mr. Stegmann to show it to Mr. Rutherford?

A. I don't know that I did or didn't.

Q. It could be that you did?

A. It is very possible I told him to show the corners, the lines.

Q. If you did, did you pay him for the service?

A. Well, he generally wanted his money. I don't know whether I paid him or not. If he didn't ask me for it, I probably didn't.

Q. Well, now, has this, this testimony, has this reminded you of any other transaction, similar transactions?

A. No. [318]

(Testimony of Chet L. Parker.)

Q. How long has it been since your last transaction of any kind with Mr. Stegmann?

A. Oh, I think two or three months ago. I would say 90 days ago.

Q. What sort of a deal was that?

A. Well, I think an attorney in McMinnville wrote him a letter threatening to sue him, I believe, or something, I believe, but I don't remember the details, don't remember the letter—on the first mortgage that I purchased from the First National Bank in McMinnville.

Q. I am talking primarily about timber deals, Mr. Parker.

When was your last arrangement with Mr. Stegmann of any character relating to timber or timberlands?

A. I believe it was the Winans piece.

Q. You had no contact with him on any timber since Winans?

A. Well, I won't say none whatsoever, but I don't remember any, I am saying.

Q. Well, did you know, Mr. Parker, that Mr. Stegmann never made an effort to dispose of the Winans property after you bought it?

A. He never made an effort?

Q. Do you know whether he ever made an effort to sell the Winans property after you bought it?

A. No, I don't know that he did or he didn't.

Q. Well, was not Mr. Stegmann also instrumental in picking [319] up some timberland for you up

(Testimony of Chet L. Parker.)

in the State of Washington after that Winans transaction?

A. Mr. Stegmann was, to my knowledge, never instrumental or connected or had anything to do with any purchase of any timber in Washington that I recollect.

Q. He never gave you any information about timber for sale? A. Not that I purchased.

Q. Well, that you were thinking about purchasing?

A. It seems like he showed me a piece one time that he is supposed to have had up—I even forget the town. It was in, way back in the mountains, anyway.

Q. All right. I think we will backtrack now, but I want to get a little information on this Gopher Valley transaction, so-called.

My understanding is that that originated with a contract which Mr. Stegmann had with the Arthurs to buy the timber on the Arthur property; is that substantially correct?

A. I think that is right.

Q. According to my information, that contract was made about September 1, 1949; does that correspond with your recollection?

A. I suppose that is somewhere in there.

Q. The record indicates—that is also known as the Murphy and Nelson timber, is it not, Mr. Parker?

A. I don't know what. I think that is what it was known as. I am not sure, however. In fact, I

(Testimony of Chet L. Parker.)

think it was known as the [320] Arthur-Thompson timber instead of the Murphy-Nelson.

Q. Arthur-Thompson timber. Wasn't it also called Murphy-Nelson?

(Discussion off the record.)

Mr. Buell: We had a copy of that marked as Exhibit 33 and have now obtained certified copies which are more complete.

Mr. Strayer: May we have this document marked Exhibit 33-A and hand both of them to the witness?

(Photostat of chattel mortgage dated September 10, 1949, was thereupon marked Plaintiff's Exhibit 33-A for Identification.)

Q. (By Mr. Strayer): Referring to the Plaintiff's Exhibit 33-A, Mr. Parker, is that a copy of the mortgage that Mr. Stegmann gave you in connection with the Gopher Valley transaction?

A. It looks like it.

Q. That was a mortgage to secure this \$6,000, was it not?

A. Yes.

Q. That was a mortgage on his house?

A. No, I do not think it had anything to do with his house.

Q. What did it cover?

A. Covered rocking a road in, as I remember.

Q. Well, that is what he wanted the money for, but the [321] security for the mortgage was his interest in the contract, was it, or in the timber?

(Testimony of Chet L. Parker.)

A. I suppose it was his interest. It was not his house; I know that.

Q. I seem mistaken on the house, but I think that the—look on the face of the mortgage. Isn't it a mortgage on what is known as the Murphy-Nelson timber, Mr. Parker?

A. That is what it says. I am not sure, but that might be an error; however, it says it belongs to Mr. Thompson.

Q. Well, what error do you mean? Do you mean the mortgage should have been on something else?

A. Well, I don't know whether they call it Murphy-Nelson or the Thompson, Arthur, or what it was called.

Q. Regardless of what name we should call it, did you understand that you were taking a mortgage on that timber on which Mr. Stegmann was working, as security for the loan?

A. Well, I did, but I didn't own it. I don't know whether he was giving me a mortgage on it or not. We had a working agreement that I would get so much a thousand for all the logs hauled out if I would furnish the money to finish the job or rock the road.

Q. But that came later, did it, Mr. Parker?

A. No, I think it had to do with this thing.

Q. You loaned him over \$6,000 for the purpose of building a road, is that right? [322]

A. And to log this property.

Q. Do you recall buying a right-of-way which was used by Mr. Stegmann in connection with that

(Testimony of Chet L. Parker.)

logging?           A. Do I remember purchasing it?

Q. Yes.           A. On my own behalf?

Q. Yes.           A. No, I don't.

Mr. Strayer: Will you hand the witness Exhibit 32.

Q. Isn't Exhibit 32 the right-of-way which you purchased, the grant of a right-of-way, Mr. Parker?

A. Not to me it isn't.

Q. What is it?

A. Well, it is an interest; that is—that a party has, would have in the road.

Q. Well, for what purpose did you buy it?

A. I didn't purchase the right-of-way. This had nothing to do, didn't have anything to do with the right-of-way.

Q. Well, for what purpose did you take that agreement?

A. For the purpose of going ahead with the logging. This was to do with rocking the road into the property.

Q. It had to do with the performance of that contract which Mr. Stegmann had made on the Arthur tract of timber, did it not?

A. Yes, it had a direct connection with it. [323]

Q. And you purchased whatever that instrument purports to convey in your own name in connection with the performance of that contract, did you not?

A. (No answer.)

Mr. Strayer: I think the instrument speaks for itself.

(Testimony of Chet L. Parker.)

A. I am not sure I did in my own name.

Q. All right. The instrument speaks for itself on that.

Is it not a fact, Mr. Parker, that along toward the end of 1949 or early in 1950 that Mr. Stegmann became very involved financially and that you found it necessary to come to his rescue and arrange a new financial arrangement? I am referring to the Rutherford contract which was made in March, 1950.

A. Well, he wanted to sell the timber, as I remember, instead of log it, quit logging and go to selling, sell the timber, and I don't know that I came to his rescue exactly.

Q. How much did he owe you at the time that the Rutherford deal was made?

A. Well, that I am not sure about.

Q. Will you hand the witness Exhibit 34.

The Court: When was the Rutherford contract?

Mr. Strayer: March 23, 1950, your Honor.

Q. That is a copy of the contract made by Rutherford and Stegmann on March 23, 1950, is it [324] not?

A. I guess so.

Q. And attached to that contract is an Exhibit which sets forth the amount that was owing by Stegmann. Was there not some \$5,960 or \$5,650?

A. I think it is.

Q. Is it not a fact, Mr. Parker, that that amount is made up of various sums of money that you had been required to expend on behalf of Mr. Stegmann to keep him from losing his contract on the Arthur timber?

(Testimony of Chet L. Parker.)

A. Well, some of these people involved were my friends from many, many years, and there was a little quarrel between Mr. Stegmann and these friends of mine as to the exact amount he owed them, and I more or less arbitrated the quarrel, you might say.

Q. Well, it is a fair statement, is it not, that Mr. Stegmann at that time was in financial trouble, and you had to come to his rescue by paying some of these bills that were pressing him?

A. Well, I wasn't forced to.

Q. I do not mean to say that you were forced to, but that is the fact, is it not, that he was in financial difficulties with his creditors?

A. Well, I paid these bills.

Q. Isn't it a fact that you paid those bills in order to protect your own loan in order to make sure that Stegmann [325] did not lose the timber rights which he had?

A. It was very important that he did not lose them.

Q. That is the reason you paid the bills, is it not?

A. That is not the only reason.

Q. That is one of the reasons?

A. That is one of the reasons.

Q. When was that loan paid off?

I notice under the Rutherford contract Rutherford was to take over and log that timber instead of Stegmann, and there would be certain payments made by Rutherford and certain stumpage or a price per thousand feet paid to you, apparently, un-

(Testimony of Chet L. Parker.)

til you had been paid around \$7,000. I also notice that according to that endorsement on the bottom of the mortgage which Stegmann gave to you that that mortgage was later satisfied of record.

Now, can you say when it was that that amount was paid off, or was it ever paid off?

A. Whether Mr. Stegmann ever paid it down?

Q. Yes.

A. I think Stegmann paid me under this deal.

Q. How much did you receive under that Rutherford contract?

A. The total amount, I don't know exactly.

Q. Do you have any method of determining it?

A. No, I don't take care of those things. I wouldn't know.

Q. Well, we have here, I believe, a record of your deposit [326] slips during that year. Should they show the amount that you received on that?

A. Not to my knowledge they would not.

Q. You would not know anything about that?

A. No, I wouldn't.

Q. We will have to ask Mrs. Parker about that, will we?

A. If you want to know anything about it, you will have to.

Q. Do you recall whether you ever received anything from Mr. Stegmann on that loan in addition to what you received from Rutherford?

A. No, but I think I just received it from Mr. Rutherford, as I remember.

(Testimony of Chet L. Parker.)

Q. You think it was paid in full by Mr. Rutherford under the contract?

A. I think it was.

Q. Isn't it a fact, Mr. Parker, that in connection with the performance of that Gopher Valley job that this White truck deal, the replevin suit, arose that I was talking to you about this morning?

A. I don't know what suit you are referring to, so I would not be able to answer that.

Q. You do not remember an occasion where Mr. Stegmann ran up a considerable bill at the Willamina Garage for repairs for his equipment?

A. No, I didn't have anything to do with running the bill. [327]

Q. I didn't say you did. Don't you remember knowing about the difficulty at that time with the garage having that bill?

A. Well, I bought this White truck from Mr. Heider, as I remember, and I paid him for it, wrote him a check for it. I did not buy it from Mr. Stegmann or the garage or anywhere else so that is my memory of this transaction.

Q. Was that, by any chance, the truck that Mr. Stegmann owned before you bought it from Heider?

A. He could have owned it before I bought it from Heider. Heider owned an awful lot of trucks that belonged to other people at that time.

Q. I notice among the mortgages of record down there in the county a mortgage from Stegmann to Heider. Let us see if I have the date on that. I believe it was around September, 1949, on a White

(Testimony of Chet L. Parker.)

truck, and I believe—I could be mistaken about this—but I think that the motor number of that truck that was taken on the mortgage to Heider is the same as the motor number of your White truck that you owned. Now, do you know anything about that?

A. I wouldn't even know the number, and I wouldn't know whether it was correct or incorrect if I saw it. I don't think I ever noticed about the number.

Q. Well, there is a mortgage record dated September 23, 1949, from Stegmann to Heider on a White truck and a Walker trailer. You have no knowledge of whether that is the same truck or [328] not? A. Well, it could be the same truck.

The Court: In whose name was that action, replevin action, brought by Mr. Heider?

Mr. Strayer: Chet L. Parker, your Honor; Chet L. Parker vs. Marlow and Ellis, was it?

The Court: Did he sign the complaint? Did he verify the complaint?

Q. (By Mr. Strayer): Do you remember verifying the complaint in that case?

The Witness: I don't remember anything about the suit.

Mr. Strayer: We have asked for a certified copy of the proceedings, your Honor. We do not know ourselves whether he verified it or not.

The Witness: The reason it is a little confusing to me, Otto Heider's suing, I don't understand that. I don't remember Otto Heider suing to get posses-

(Testimony of Chet L. Parker.)

sion of something I bought from him. That is the confusing matter.

Q. (By Mr. Strayer): Mr. Parker, do you remember later with reference to this Arthur timber, the same timber we were talking about as the Gopher Valley transaction, do you remember talking to Mr. Elmer Scoville about buying that timber?

A. Yes, I believe I did.

Q. Tell us about that. [329]

A. Well, it is very hazy in my mind, certainly. I believe I mentioned to my grocer, Mr. Walker, that Walt might sell his holdings up on Gopher Valley, and he knew—he later came up with Mr. Scoville. I believe he came up with his name or came with him, or something.

Q. He came with Scoville, you say?

A. I think this Mr. Walker did. He contacted him, as I remember. He knew him from Tillamook, acquaintances, and I don't know whether he showed him the timber or Mr. Stegmann did. Anyway, Mr. Stegmann and Mr. Scoville came down to my house one day, and they wanted me to make an agreement for them. They was going to purchase it, and I believe I called my—I don't believe my wife was home that day. The reason I remember that, I believe my niece came over. She made so many errors everyone got angry about it that I finally tried it, and I did worse, but I remember making up an agreement between Scoville and Stegmann, and I read it to them. I said, "Now, does this suit you, Mr. Scoville? Does this suit

(Testimony of Chet L. Parker.)

you, Mr. Stegmann? I don't have a thing to do with this deal. You fellows are the cuckoos dealing on it, though." That is about the extent I know anything about it.

Q. Can you tell us the date for that action?

A. No, but there was a contract made up on it.

Q. Can you give us the approximate date with relation to these other matters? Was it after the Rutherford deal? [330]

A. No, it was before, I suppose. I don't know.

Q. Your recollection is that it was before the Rutherford contract?

A. Well, it has been a long time ago. I do not know whether it was before or afterwards.

Q. Well, now, that contemplated the sale by Mr. Stegmann of his interests in the Arthur timber to Mr. Scoville, did it?

A. I think they signed a deal then. I am not sure.

Q. Were you the one that put Mr. Scoville in touch with Mr. Stegmann on it?

A. Mr. Walker could have. I believe Mr. Walker did.

Q. Mr. Walker did not deal with Scoville, did he?

A. Well, I don't know. I don't know that I had any contact with Mr. Scoville directly at that time. I don't know that he did.

Q. Did you have a mortgage on any other equipment of Mr. Stegmann's that you have not told us about yet?

(Testimony of Chet L. Parker.)

A. Well, I don't remember of any other.

Q. Incidentally, I notice that your mortgage on that in the Arthur timber was recorded?

A. Pardon me. It was or was not?

Q. How did it happen you recorded that mortgage?

A. Well, I don't know the reason, but we recorded it. We had it, and I suppose we recorded it, and that is about that. [331] I don't know——

Q. Did you have a mortgage on any of his motor vehicle equipment, Mr. Stegmann's motor vehicles?

A. Are you referring to motor vehicles, cars or——

Q. Cars, trucks.

A. Not that I remember having a mortgage on it.

Q. Let me remind you of one in particular.

Do you recall an occasion in May of 1950 when Mr. Stegmann was driving a truck with a Caterpillar aboard and slid down off the road into the Trask River or near the Trask River? Do you remember that occasion?

A. No, I do not. I know where the Trask River is very vividly. I have walked every foot of it many, many times, and I don't remember having anything to do with Mr. Stegmann concerning a Cat or a truck on the Trask River.

Q. Don't you remember that you had a mortgage on a truck and I believe also a tractor, and that Mr. Heider also had a mortgage on the truck—on the tractor? Don't you remember?

(Testimony of Chet L. Parker.)

A. What has that got to do with the Trask River? I don't understand that.

Q. Let us leave the Trask River out of it, then. Don't you remember an accident where Mr. Stegmann was driving a truck loaded with a tractor, and they slid down off the road, and there was a heavy loss, and you filed a claim against the insurance company for the loss? [332]

A. Stegmann was supposed to have owned the Cat?

Q. Well, I am asking you for your recollection on it.

A. Well, I am a little confused on it.

Q. How many claims have you made for loss of either Caterpillar or a truck that slid off the road?

A. I don't remember making any, but I do remember of a Cat that belonged—I don't believe it was Mr. Stegmann's—that slid off the road. I think it was, I don't know, a two or three thousand dollar claim or something.

Q. Two or three thousand what?

A. Claim. I don't remember the amount.

Q. How about the truck? Didn't you have a mortgage on the truck?

A. Well, I don't remember having a mortgage on the truck.

Q. Let me give you some more details and see if it does not come back to you.

Don't you remember that you took—a claim was filed by you and Stegmann and Heider against the insurance company, and don't you remember that

(Testimony of Chet L. Parker.)

the loss in the amount of \$8,000 was paid off, and you divided that money among the three of you? Don't you remember that you bought the salvage on the damaged equipment?

A. You mean we split this thing up three ways?

Q. Well, do you remember any of that?

A. Well, I certainly didn't split anything in any insurance [333] loss with any other person. I would not—where I split the money received from any insurance company with anybody I would certainly remember that.

Q. You do not remember an occasion where you had a second mortgage on a motor vehicle, and Mr. Heider had a first mortgage?

A. Well, I remember a Cat loss, but I think I purchased—the reason it is a little confusing to me, over near the Trask River I purchased an International TD-18, I believe it was.

Mr. Jaureguy: Did you want him to stop while you were talking here?

Mr. Strayer: No, go right ahead.

The Witness: An International TD-18 from an insurance company after it had been wrecked, but I didn't have anything to do with the wreck.

Q. (By Mr. Strayer): All right. Let us talk about that International. Now, isn't it a fact that you had a mortgage on that, that same truck, before it was wrecked?

A. This didn't have anything to do with a truck. This was a Cat.

Q. You are talking about an International Cat?

(Testimony of Chet L. Parker.)

A. Yes, TD-18 International Cat. The reason I remember it, I sent my son over. I couldn't go. He was then, I guess, 12 or 13 years of age, and I sent him over and down a 400-foot [334] canyon to appraise it. He was rather perturbed. I had my knee hurt at that time. He said, "Well, Dad, I sure hate to put a price on this thing. I might be wrong about it." I said, "Go ahead. Put your price on it and we will pay it anyhow." When he came home I think he was kind of worried whether he made a mistake or not, and he went over and helped me take it out of the canyon, and we sold later, I think I made a couple, three thousand dollars on it, and he felt rather happy about it that he had not misplaced his judgment, a 12-year-old. I remember that, but Mr. Stegmann never had anything to do with the Cat before, to my knowledge.

Q. Did you have anything to do with it before it went down off the road?

A. I never saw it before.

Q. Did you have anything to do with that truck that the Cat was on that also went down off the road?

A. I didn't know there was a truck involved in that particular sale that I purchased, this salvage I purchased. We must be talking about two different deals, here.

Q. Perhaps so. What year do you place that instance in?      A. I would think 1950 or '51.

Q. In 1951?

A. I think so.

(Testimony of Chet L. Parker.)

Q. What was the name of the man from whom you purchased [335] this salvage?

A. I don't remember.

Q. Did you purchase the salvage on the truck about the same time or at any other time?

A. No; well, not that I remember, I didn't, not with this transaction.

Q. Are we, by any chance, mixed up on what river it might be? Are you still concerned about the Trask River? Could it have been the Nestucca or the Nehalem River?

A. Well, as I remember, it might have been—well, the reason I remember the Trask on the one Cat because that was right adjacent to a tributary of the Trask. I remember that Cat distinctly because we had a terrible time getting it out, but I just can't offhand remember——

The Court: Have you any documents on it?

Mr. Strayer: We do not have them available at the present time.

The Court: Put them in later. Let us go. He has now been on the stand eight hours.

Mr. Strayer: I know, your Honor; it is——

The Court: This case will have to be finished by Saturday night midnight, and it means that we are going to have night sessions beginning tomorrow because I have three jury cases, and we will go until 11:00 o'clock at night. We will start at night and go to 11:00. From 9:00 o'clock [336] tomorrow morning we will go until 11:00 o'clock tomorrow night and keep on going until we finish.

(Testimony of Chet L. Parker.)

Mr. Jaureguy: No night session tonight, though?

The Court: No, not tonight.

Mr. Strayer: I am sorry the way this broke, but I feel it is important or I would not do it. I am going to try and summarize.

Q. This mortgage that you had on Stegmann's house, Mr. Parker, I will state as I understand the transaction. Then I want you to state any inaccuracy or inaccuracies that you believe are present. As I understand it, you bought this house in McMinnville on June 2nd, 1950. On July 20, 1950, Stegmann bought the house from you and gave a mortgage to the bank at McMinnville for \$6,000. On August 20, 1950, Stegmann gave you a mortgage for \$3,500 due on August 29, 1953, and on July 20, 1950, your deposit slips indicate that Mr. Stegmann paid you \$2,000 on the house. In November of 1951 I understand Mr. Stegmann advertised the house for sale, but it was not sold and on August 7, 1952, Stegmann deeded the house over to you.

Now, is that substantially correct? I do not hold you to those exact dates, but have you picked up any inaccuracy as far as you remember?

A. I don't remember him paying \$2,000 on it, but I am not sure he did or didn't. [337]

Q. What is that?

A. Let's see; paying the \$2,000, I guess he did—I don't know whether he did or not.

Q. Are there any other inaccuracies that you noted? A. No, I guess they are all right.

Q. Now, your income tax return. We have

(Testimony of Chet L. Parker.)

talked about this Wrist timber sale, and in order that we can identify that by date, your income tax return for 1951 indicates, does it not, that you bought the Wrist timber on April 19, 1951, for \$3,000 and sold it on April 25, 1951, for \$6,000?

A. I think that was my wife's deal. That was her deal, I believe, but then I suppose I reaped the reward. It was my deal, too.

Mr. Jaureguy: I understood that that is what the income tax shows—that is what the income tax return shows. That is the question you asked?

Mr. Strayer: All right.

The Witness: I can't even find it.

Mr. Strayer: I think, your Honor, if we could have a very brief recess, I may be through.

The Court: Let me ask a few questions that have been bothering me.

#### Examination by the Court

Q. Mr. Parker, generally, was there any correlation between the security you received on a loan or the financial worth of [338] the borrower and the amount of interest that you charged?

A. I don't believe I understand that.

Q. You testified that you have loaned a considerable amount of money to various people, and you got from 4 to 8 per cent?           A. Yes.

Q. The question I am asking you, was there any correlation between the security you received and the amount of interest you charged?

A. I have loaned a lot of money, your Honor,

(Testimony of Chet L. Parker.)

without any security whatsoever, many thousands of dollars.

Q. Did you loan money to people who were financially involved or people who had a considerable amount of assets?

A. Why no, I loaned money to grubstake people and various things where they had no assets whatsoever.

Q. What were the sizes of these loans, approximately, or what was the range?

A. Willamina Lumber Company, I believe I loaned them \$50,000 when they were—the Manager told me if I wanted my money it would be finished, complete, and I let them go ahead and saw up my logs, for one example.

Q. Did you loan people money with whom you had no other business relations? A. Yes.

Q. Did you do it solely for the amount of interest that was set forth in the note; in other words, 4 per cent or 5 per [339] cent or up to 8 per cent?

A. Yes, or a certain amount per thousand on logs if it involved logs.

Q. In addition to that?

A. Yes, sometimes in addition to that.

Q. In other words, for the risk, in addition to interest you got so much a thousand on the amount of logs?

A. Which was quite helpful in the risk involved.

Q. Here you charge Stegmann 4 per cent. That is a low rate of interest, isn't it?

(Testimony of Chet L. Parker.)

A. Well, it was as far as I am concerned.

Q. That is lower than you can borrow from a bank on a secure obligation, isn't it?

A. Well, I have not borrowed lately. I don't know.

Q. Now, did you get anything, were you promised anything in addition to that 4 per cent interest?

A. No.

Q. On this \$22,000 loan and on this letter of credit of \$10,000 the total amount you received from Stegmann was 4 per cent?

A. That is right.

Mr. Jaureguy: On the others it was 6.

The Witness: On one of them.

The Court: On one of them it was 6. Now, didn't you have any arrangement to share in the profits with Mr. [340] Stegmann?

A. I did not.

Q. Did you have any agreement with him that you would have the first opportunity to purchase any timber that he bought with your money?

A. No; he told me he would let me know of any timber.

Q. How did you arrive at a 4 per cent figure with Mr. Stegmann?

A. Well, he wanted to pay 4 per cent. He didn't want to pay 6.

Q. You knew that he was, didn't have a great deal of assets, didn't you?

A. Well, he had stuff scattered all over the country.

Q. But at that time you had actually helped him

(Testimony of Chet L. Parker.)

out on two or three occasions when he needed money?

A. Yes, but, sir, he was up and down. Sometimes he would have a lot of money, and it seemed like the next time he wouldn't have so much.

Q. When he did not have so much you thought the 4 per cent was an adequate rate of interest?

A. I thought it was.

Q. He gave you security, didn't he?

A. Yes.

Q. Did you regard that security as adequate?

A. Pretty close. [341]

Q. His grader?

A. Yes, the yarder, and the Diesel on it. The Diesel would be worth probably under \$5,000.

Q. Well, what was the grader worth?

A. Well, the grader would be, oh, not to exceed \$1500, I would not think.

Q. That is \$6,500, and the loan was \$22,000?

A. Well, of course, the Diesel loader, and we had all the lines, rigging, drums and all the blocks and everything involved in this transaction on this yarder.

Q. They were scattered around?

A. The Diesel motor is part of the yarder.

Q. You thought that the value was around \$22,000?

A. Yes, it was very close.

Q. You buy a lot of timber, don't you?

A. Well, that—all my life that is about what I have been doing.

Q. Timber buying requires a considerable

(Testimony of Chet L. Parker.)

amount of cash, does it not? That is the way you make your deals is you go out to the people and pay cash for it?

A. Well, you don't always have to pay cash, but I buy the timber.

Q. Well, couldn't you have used this \$22,000 to better advantage than purchasing timber for yourself than loaning it out at 4 per cent? [342]

A. That is very possible. However——

Q. Wasn't it advantageous for you to keep a considerable amount of cash available to use in connection with possible timber deals?

A. I had quite a bit.

Q. You thought you had enough?

A. I figured I had enough on it.

Q. You considered 4 per cent was an adequate return or 6 per cent was an adequate return for the money?

A. This was, came out of a savings account I had, and I kind of treated it a little different than I did my hazardous account or timber business.

Q. Didn't you testify yesterday that you figured that the most that you could pay for this Hood River property was \$125,000? A. Yes.

Q. When you—and the next day you had a deal for it for \$300,000 to make \$180,000 on a quick turnover? A. Yes

Q. So you regarded 4 per cent as adequate, but you insisted on making \$65,000 in a few days on the timber deal?

A. I didn't insist on it. I hoped to.

(Testimony of Chet L. Parker.)

Q. What discussion did you have with Stegmann relative to the size of the profit or fee that he was to receive on this Hood River property before August 13th, on or before August 13th? [343]

A. Well, it seemed like he wanted a little more money for his option, as I remember.

Q. As I understand it, on the 13th you knew that he was going to pay \$100,000 for this property?

A. Yes

Q. You decided that when you went up there that \$125,000 was the maximum you could pay, but prior to that time had Mr. Stegmann told you what he wanted, what he wanted for the property or for his share?

A. Yes, I think he told me, but I don't remember.

Q. How much did he want?

A. Well, it seems like it was more than \$125,000.

Q. You finally agreed to pay him \$20,000, didn't you? A. Yes.

Q. That was a pretty sizable fee or a generous profit, wasn't it, for a quick turnover?

A. Yes, but I could see sixty thousand, and I hated to lose that.

Q. But he made this deal with your money, didn't he? A. Well, it was, in a loan.

Q. He was drawing on your account or his own account, and you had agreed to pay for it?

A. Yes.

(Testimony of Chet L. Parker.)

Q. Now, the first thousand dollars that was paid on this property was your money; that is, the money that was drawn—a [344] check for a thousand dollars which you paid? A. Yes.

Q. Under the deal, \$4,000 additional had to be paid by the 18th of August; that is true?

A. Yes.

Q. And that was also to be written on Mr. Stegmann's account, but you had agreed to pay it under the loan arrangement?

A. Yes, he wrote a check, of course.

Q. Now, that meant that although Stegmann was—the amount shown on the books was \$25,000, actually, Stegmann was only to make that \$20,000 profit because you were charging him with the \$4,000 and \$1,000?

A. Yes, I guess that is the way it figured out.

Q. Why on August 13th did you give him a check for \$25,000? Why didn't you give him a check for \$20,000?

A. He claims I outfigured him of the \$4,000 on the deal, but he—he owed me the money, and he wanted \$25,000 for the option, and I gave him the check for it.

Q. But after you had made the deal you mean to say that he thought he was getting \$25,000, but, actually, the way it figured out he only got \$20,000?

A. Well, yes, that is what it amounts to.

Q. And he did not permit you to deduct the \$1,000 and the \$4,000 from the deal?

A. No. [345]

(Testimony of Chet L. Parker.)

Q. On August 13th you had not met Winans or talked to them, had you?

A. Not that I remember, no.

Q. Wasn't it sort of unusual to pay Stegmann \$25,000 prior to the time that you knew whether Winans was going to go through with that deal?

A. Well, he had something to sell me.

Q. Well he just had a piece of paper, an option, didn't he?      A. Yes.

Q. You didn't know whether Mr. Paul Winans had authority to sell the property?

A. No, I was getting a title search made, though.

Q. All right. We will come to that.

You gave him \$25,000 on August 13th, and that was the same day that you ordered a title search?

A. Yes.

Q. You did not know whether the title, the report, would show the title was in the name of Winans, did you?      A. No.

Q. Well, isn't it unusual to pay \$25,000 out before you knew that the title was good?

A. Well, it is probably still—I did the same thing with Northwest Door just recently. I gave them \$90,000 without having title. [346]

Q. What is the net worth of the Northwest Door Company?

A. I suppose, I don't know what it is.

Q. They are a fairly responsible firm, aren't they?      A. I kind of think so.

Q. But Stegmann at that time owed you \$22,000 on a mortgage and about six or seven thousand

(Testimony of Chet L. Parker.)

dollars under the loan agreement. That is \$28,000, and by that time you had known that his financial condition was not too good. By August 13th you knew that Mr. Stegmann was in financial difficulty, didn't you?      A. Well, I had heard that, yes.

Q. And yet you were willing to give him that check for \$25,000?      A. On this deal I was, yes.

Q. And you didn't try to apply it onto the amounts that he owed you?

A. Well, I think I mentioned it to him.

The Court: Let us take a recess, about a five or ten minute recess.

(Afternoon recess taken.)

(3:45 trial resumed.)

Mr. Strayer: I have no further questions, your Honor. Mr. Buell wants to put some exhibits in.

Mr. Buell: May it please the Court, in the course of [347] the direct examination Mr. Parker has identified and testified concerning Plaintiff's Exhibit 26, the Notice of Election to Purchase signed by Walter Stegmann, dated August 18th, which we offer in evidence.

The Court: All right.

Mr. Buell: Plaintiff's Exhibit 32, the assignment of right-of-way from Arthur Sowle and Roy L. Stafford to Chet L. Parker, dated February 23, 1950.

Exhibits 33 and 33-A, photostatic copy of mortgage from Walter Stegmann to Chet Parker.

(Testimony of Chet L. Parker.)

Exhibit 34, contract between Walter Stegmann, Chet Parker, and Rutherford Logging Company.

Exhibit 35 and Exhibit 35-A, the \$22,000 note and mortgage.

Exhibits 36 and 36-A, original and copy of \$10,000 note and agreement.

Exhibit 38-A, original and copy of Check No. 75 payable to Ethel Winans, \$1,000.

Exhibit 38-B, original and copy of Check No. 81, payable to Ethel and Paul Winans for \$4,000.

Exhibits 39-A, -B, -C and -D, which are the original and copy of checks payable to M. H. David in the amount of \$150, Mr. Leo Johnson, \$2,500, and Mrs. A. Leo Johnson, \$2,000; a transmittal note from The First National Bank of McMinnville to Mr. Parker returning the canceled checks. [348]

Exhibits 40 and 40-A, original and copy of the \$25,000 check.

Exhibits 41 and 41-A, original and copy of Check No. 1193 to Stegmann in the amount of \$382.

Exhibit 42, photostatic copy of Phillips Construction Company bank statement for August and September, 1951.

Exhibit No. 49, United States Income Tax Return of Mr. and Mrs. Parker of 1951.

Exhibits 57-A and -B, the telephone calls from the phones of Parker and Walter Stegmann.

Exhibit 104, check to Title and Trust, dated August 16th, in the amount of \$25.

Exhibit 307, Notice of Election to Purchase.

The Court: Is that all?

(Testimony of Chet L. Parker.)

Mr. Buell: That is all, your Honor.

The Court: Any objection?

Mr. Buell: I am sorry. There are two more. Exhibits 320 and 321 which are the letters of the Bank of Hood River to Mr. Parker.

Mr. Lindsay: They have been previously admitted.

The Court: Mr. Jaureguy?

Mr. Jaureguy: There is no objection whatever. I think we received one or two of the exhibits Mr. Parker did not identify.

Mr. Buell: As to the telephone calls that is [349] correct.

Mr. Jaureguy: There is no objection.

The Court: They may be admitted.

(Documents heretofore identified as Plaintiff's Exhibits 26, 32, 33, 33-A, 34, 35, 35-A, 36, 36-A, 38-A, 38-B, 39-A 39-B, 39-C, 39-D, 40, 40-A, 41, 41-A, 42, 49, 57-A, 57-B, 104, 307, 320 and 321, respectively, were thereupon received in evidence.)

The Court: You may proceed, Mr. Krause.

### Cross-Examination

By Mr. Krause:

Q. Mr. Parker, you have a counterclaim in this proceeding against a number of Winans brothers and sisters. Will you tell us what that is based on?

Mr. Jaureguy: I think that is a misstatement, counterclaim.

(Testimony of Chet L. Parker.)

The Witness: I don't know anything about legal affairs. I would not know that.

Mr. Krause: It is entitled a cross-claim, Cross-Claim of Defendant Chet L. Parker against Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans, and Linnaeus Winans, in the sum of \$125,000.

What is that based on, Mr. Parker? [350]

Mr. Jaureguy: I want to object to that on the ground that that is a legal question.

The Court: You might ask Mr. Jaureguy the question. He prepared the pleadings. These pleadings are not signed by the parties. They are based upon information which the party gave to his attorney. He is not expected to know all these things. Ask him specific questions.

Q. (By Mr. Krause): Mr. Parker, do you claim that any of the Winans misrepresented anything to you in connection with this deal on the Lost Lake property?

A. Well, I have a—on the assignment they say they will get me a good deed.

Q. In the first place, you got a paper?

A. Yes.

Q. You received an assignment from Mr. Stegmann on an option?           A. Yes.

Q. You say that that option, on the basis of that option there was a misrepresentation, is that right?

A. Well, it says a good deed on it. I guess it is written necessarily on good paper, but it is not what I would call a good deed.

(Testimony of Chet L. Parker.)

Q. Then the deed that you finally received, you feel, was not a deed that the option called for?

A. That is right. [351]

Q. All right. What else?

A. Did I claim against the Winans?

Q. Well, no; what misrepresentation was made to you by any of the Winans?

A. Well, when Mr. Paul Winans told me he had a good title. I don't know what a good or bad title is, but I presume when you say you have a good title you own something.

Q. On Monday morning you had ordered a title report at Hood River. That was the 13th of August?

A. I don't know whether it was morning or afternoon.

Q. Was it before you saw Mr. Paul Winans for the first time?      A. Yes.

Q. Then after having ordered a title policy you saw Mr. Paul Winans on the 13th of August?

Mr. Jaureguy: No.

Mr. Krause: Isn't it?

Mr. Jaureguy: If you are asking him—maybe I should not interrupt—but he didn't see him on the 13th of August.

Mr. Krause: Pardon me. The 18th of August. I am sorry. Was the 18th of August the first time that you saw any of the Winans, Mr. Parker?

A. To my recollection, yes.

Q. Well, you mean that you could have seen

(Testimony of Chet L. Parker.)

them prior to that without knowing who they [352] were?      A. It is very possible.

Q. You just might have passed them on the street or something like that?      A. Yes.

Q. But, as far as calling on any of them or being with them to be introduced to them, that was the first time you ever saw any of them, is that right?

A. As I remember, yes.

Q. At about what time of the day was that that you met Mr. Paul Winans?

A. Well, it seems like it was in the evening.

Q. It seems like it was in the evening?

A. Yes.

Q. About what time of the evening?

A. Well, I can't place it exactly as to the time.

Q. What time does the evening start, then, so that we know after what hour it would have been?

A. Well, anywhere from 3:00 o'clock to 7:00 o'clock.

Q. That is, the evening starts at 3:00 o'clock so this must have been between 3:00 and 7:00?

A. Yes, somewhere.

Q. What was his office located in?

A. Well, adjacent to a service station, I believe.

Q. Was it a part of a service station building?

A. I don't know whether it was part of it or attached to it. [353] I don't remember.

Q. Did you know where his home was?

A. No, I don't think so.

Q. You never were in his home?

A. I never was in Paul Winans' home, no.

(Testimony of Chet L. Parker.)

Q. Were you ever in the homes of any of the Winans?       A. No.

Q. Then who was present besides Paul Winans and yourself when you got there?

A. Well, I think Stegmann was there, Walt Stegmann, and, I believe, Carl was with him, but I am not sure.

The Court: Who was the last person?

The Witness: Carl Stegmann.

The Court: Carl Stegmann?

The Witness: I believe he was there, but I am not sure.

Q. (By Mr. Krause): Walter Stegmann and Carl Stegmann?       A. Yes

Q. Did anybody introduce you to Mr. Winans, to Paul Winans?

A. Well, I think probably Walt did.

Q. However, you had introduced yourself to him the day before over the telephone, had you not?

A. Well, I think, as I recollect, I called him the day before.

Q. Had you known of this letter that Mrs. Parker had written [354] regarding Stegmann's financial responsibility?

A. Well, she told me about receiving a letter. I think she made mention of it.

Q. She told you about having received the letter from the bank at Hood River.

A. Yes, as I remember.

Q. Did you read that letter that had come from the bank?

(Testimony of Chet L. Parker.)

A. No, I think the other day when I first came on here was the first time I had ever seen it.

Q. Did you read the letter that your wife wrote prior to your seeing it on the witness stand?

A. I think that is the first time I ever saw that letter.

Q. You were taking an assignment of an option that was in writing, was it not? A. Yes.

Q. There was not anything to the deal except what was in that option, as you understood it, was there?

A. That is what I was getting, is the option.

Q. Did you, before you bought the option or took an assignment of it, read it through?

A. Yes.

Q. Did you find in it that you were going to receive the right, title and interest of the sellers?

A. That is not exactly the way I remember it.

Q. That is not the way you remember it? [355]

A. Well, not in exactly that minuteness. I was to——

Q. You know the meaning of the words, "right, title and interest," do you, Mr. Parker?

A. Well, not exactly, no.

Q. Did you take the option to any person to have it explained to you before you took the assignment?

A. No.

Q. You have been accustomed to hiring lawyers, though, to explain the meaning of documents to you, have you? A. No more often than I have to.

Q. Well, I am sure you do not go there oftener

(Testimony of Chet L. Parker.)

than you have to, but you have taken instruments to them to have them explained to you, have you?

A. Well, not very frequently, no.

Q. I just asked you whether you had done it at all, Mr. Parker?

A. Well, I don't even remember of ever having, other than Mr. Jaureguy maybe, explain any instruments to me, or mortgages, as I recall them.

Q. When you went to the Marsh brothers after these difficulties had arisen regarding the title, you did not show them the option that you had and ask them to tell you what you were entitled to get under that?

A. Well, I showed them the option along with a lot of other things, as I remember. [356]

Q. You had employed, I think you said, Mr. Abraham at Hood River prior to this occasion?

A. Well, I was in—he had something to do with a deal on a dump, on a log dump, and I don't think I employed him, but he was the attorney for—I think maybe I paid him half the fee, I don't know. I wanted the other fellow to pay all of it. I don't remember whether he finally got half of the fee out of me or not.

Q. In April of 1951 you purchased a log dump up at Hood River, had you?

A. In April, 1950.

Q. 1951?

A. I don't remember what month it was, but I think that is probably correct.

(Testimony of Chet L. Parker.)

Q. How did you happen to buy that?

A. Well, I don't know whether I bought it or not. I had an agreement on it where I furnished the boom sticks for some kind of a deal, and that would give me a pocket or two. That resulted from John Marsh that had some timber to sell to me in Hood River County and whatever county is north-east of there. I forget what it is.

Q. Wasco County? A. Yes.

Q. Did you ever use the log dump for dumping any logs there after purchasing it? [357]

A. I don't believe so.

Q. Did you say that you just had a contract to buy it or that you bought?

A. I don't think I purchased. I didn't get any deed to it, to the—if you get deeds to the one you buy, why, I didn't get a deed for it. I had an agreement or something, as I remember.

Q. In your 1951 return it says, "Hood River log dump site, 4-25-51," at the cost of \$1500. Did you buy the site, or did you just get some sort of an agreement whereby you could use it?

A. Well, I didn't purchase it. I didn't get a deed for it, but I did spend that amount of money on the dump. I think we had to furnish the boom sticks and for which we could get the privilege of using a pocket or two there to dump logs.

Q. That was some months before you purchased the Lost Lake property? A. Yes.

Q. That you bought the dump? A. Yes.

Q. Apparently it was only a right to use it,

(Testimony of Chet L. Parker.)

and you furnished some of the equipment to be used in the log dump; is that right?

A. Well, I don't think equipment; I think it was boom sticks. [358]

Q. Well, boom sticks are things that you use in a log dump, aren't they?

A. Making up a pocket, yes.

Q. At the time you acquired that log dump did you have any timber in view up there in Hood River or Wasco Counties?      A. Yes.

Q. What timber did you have in view?

A. The timber that John Marsh represented that he owned.

Q. That was in Wasco County, the John Marsh timber?

A. Well, he said he owned some in both counties.

Q. Did you go to look at it?      A. Yes.

Q. You made no agreement with him to buy it, however?      A. Well, I didn't get time to.

Q. Had you been up in the Lost Lake prior to, say, the 13th of August, 1951?

A. Yes, I would say possibly so.

Q. You had been up there?

A. I should think so, yes. I was looking at some timber this side of Lost Lake that this John Marsh purported to own.

Q. Do you know where, approximately, where the Mt. Hood Forest Reserve was?

A. I think I do.

Q. This property that you were looking at

(Testimony of Chet L. Parker.)

owned by John [359] Marsh, that was not in the Reserve, I take it?

A. Well, I don't know whether it was in the Reserve or outside the Reserve. I am not sure.

Q. I would like to have you return now to this 18th of August. In the telephone conversation with Mr. Paul Winans on the 17th, the day before your meeting up there, was anything said regarding the title at that time? A. Not that I remember.

Q. On the 18th after you had been, had met with Mr. Winans there, and you think Walter Stegmann was there and Walter Stegmann's brother?

A. Well, I am sure Walter Stegmann was there, and I think his brother was there.

Q. Just tell us exactly what Mr. Paul Winans said at that time?

A. Well, as I remember, either I introduced myself or Mr. Stegmann introduced me, and I informed him from then on he would be dealing with me on this deal, this transaction.

Q. I beg your pardon?

A. On this deal, this transaction.

Q. Yes?

A. And I did ask him in the option, I did notice where—whether he was going—I wanted to know about the title, whether I was going to get an abstract or title insurance. I didn't [360] notice in there making mention what kind of a title he was going to give me, and he said he would give me an abstract if I wanted it, and I told him I wanted a title insurance policy, and he said if I wanted a

(Testimony of Chet L. Parker.)

title insurance policy I would have to pay for it, that he was not going to pay for any, and it didn't call for him to give any. That is about the extent, as I remember. We made arrangements that Mr. Stegmann was going to do the surveying on the lake properties, I believe, that night, but I am not sure about it, as I remember.

Q. All right. Is there anything else that Mr. Paul Winans said at that time besides what you have told us?

A. Well, he said he had a policy on it, on the property, of \$8,000.

Q. Which you already knew when he told you that?

A. Well, if my information was correct, I knew it.

Q. But the title company had so told you that there was an \$8,000 policy?

A. Now I am not sure they told me or I happened to see it when they pulled the file out.

Q. At any rate, you knew of an \$8,000 policy on this property before you talked to Paul Winans?

A. Well, I thought there was, anyhow.

Q. What else did Paul Winans say?

A. That is about all that I remember of the discussion. [361]

Q. What was the next occasion when you saw Mr. Paul Winans or any of the Winans?

A. Well, if I am going to give just from memory, why, I couldn't tell you, but if I could read this thing maybe I could tell you.

(Testimony of Chet L. Parker.)

Q. That is your diary? A. Yes.

Q. Why, certainly, use it if you like.

(Witness thereupon consults exhibit.)

A. Well, without reading it real careful, I think it was possibly on August 31 of 1951.

Q. August 31st?

A. Without reading it really careful here.

Q. Tell us where and under what circumstances you met any of the Winans on the 31st of August?

A. Well, Walt was going to go up and survey the lines, and we were supposed to help.

Q. Who is "We"?

A. Oh, Paul and I and Ross and my son. As I remember, we went up to the lake, and I believe in my car, but I am not sure whose car it was. It possibly was mine, because most people want to wear out mine instead of theirs, and we worked that day.

Q. What did you do?

A. Well, we was surveying, cutting brush. [362]

Q. What were you surveying?

A. Well, I really don't know. We were supposed to be surveying some land, I guess.

Q. I assume that, but were you trying to survey the 40-acre tract, or were you surveying some part of the entire tract?

A. We was working next to the lake. As I remember, Mr. Stegmann started at the edge of the lake, and we kept running funny lines around trying— as far as I was concerned, I wanted all the

(Testimony of Chet L. Parker.)

timber. I didn't care about anything else, but I wanted the trees.

Q. What surveying equipment did you have with you?

A. I don't know as I know the names for them. A compass, I had a compass and something to measure with.

Q. You mean to measure distance or length?

A. I guess that would be the same thing.

Q. Was it a tape measure?

A. Well, it was a steel, steel tape.

Q. A steel tape? A. Yes.

Q. Did they call it a chain?

A. I don't know as anyone ever called it.

Q. What other equipment—if you do not know the name of it, describe it—did you have there at the time of this survey?

A. Well, that is all there was.

Q. That is all? [363]

A. Other than cork (sic) boots.

Q. You had cork boots on?

A. I believe I did.

Q. To what extent did you participate in this survey?

A. I would say just about even with everyone else, maybe a less amount for I was somewhat lazy that day.

Q. What did you do? Did you carry the compass in order to determine your direction? Did you hang on to one end of the tape while you were running out distances or measurements, or what did you do?

(Testimony of Chet L. Parker.)

A. To start in with, Mr. Stegmann set the compass up on a stake or a stick or something, and then I was to sight through, and if they got some brush on them I was to tell, to wave my hand to the right, and they was supposed to go to the right, and, to the left, they was supposed to go to the left, and so he paced out the distances of the property, and if he didn't sight everything, why, he would come back and change it, and we would do it all over again. I remember that because we seemed to do lots all over. We practically sliced all the trees up there off trying to find out where we was. Then I sliced a little brush, not very much, as little as possible, that is.

Q. Did you also hang on to one end of the tape while measurements were being made?

A. I could have, maybe both ends; I don't [364] know.

Q. You would not hold both ends at one time, would you, while you were doing that?

A. Well, rolling it up or something, I have done it. I don't know.

Q. Was there anything said by Mr. Ross Winans or Paul Winans regarding title to any part of that property that you were working on?

A. To me?

Q. Well, to you or in your presence?

A. Not that I heard, no.

Q. You were, during all of your surveying operations were you on the so-called 14 acres or on the 40 acres or say the 25-acre tract or the 40-acre

(Testimony of Chet L. Parker.)

tract?           A. I believe on both of them.

Q. You think you were on both of them?

A. I believe so, but I am not sure about that.

Q. Was there to be a reservation of any part of the 40-acre tract as well as a part of the 25-acre tract?

A. As I remember, Mr. Winans thought he might want all of the creek, and the creek, as I remember, ran into this back 40, I always call it. We went up there to agree on it or disagree on it. It seemed like we mostly disagreed, and he wanted Walt to run a line down through to determine where and how many acres would be involved, if this went there or if it went there or wherever it might go, so, therefore, I [365] think we were on possibly both of them.

Q. Did you actually survey off any part of the 40-acre tract or a portion that was finally set aside and reserved by Winans, was that all part of the 25-acre tract?

A. I think the one that finally was reserved was part of the 25 or 23-acre tract, yes, but I don't think we made any final survey. I don't know what a final survey would be anyway so no use trying to say whether we made a final one or not.

Q. Between the 18th day of August and the—was it the 30th that you said just now?

A. Well, it seems to be here the 31st; I don't know.

Q. The 31st, yes. Between those two dates you do not recall seeing any of the Winans at all?

(Testimony of Chet L. Parker.)

A. I don't recall it.

Q. Do you recall any conversation with any of them in that intermediate period?

A. In person, you mean?

Q. Yes; well, that you talked to them or heard them talk?      A. Not that I remember.

Q. On this 31st, then, you say that there was no discussion, nothing said by the Winans regarding the title?      A. That I heard?

Q. Well, of course, that you heard. Did you meet with Paul Winans or any of the Winans on any subsequent occasion before [366] the deal was finally closed?

A. What does "subsequent" mean?

Q. Afterwords. You have already said that——

A. Yes, I did. I did.

Q. Am I right so far, the only times you had a chance to talk to any of them was on the 18th of August, and on the 31st of August? After the 31st of August did you meet with any one of them again and hear them say anything?

A. Well, yes, again between the 13th and the 31st, referring to any person, talking right to them like you and I. Then after that my diary indicates that I saw him on September 4, 1951.

Q. Saw Paul Winans?      A. Yes.

Q. Was he the only one you saw on that date of the Winans?      A. I believe I saw all of them.

Q. You saw all of them?

A. No, I didn't see them all because I don't

(Testimony of Chet L. Parker.)

know them all. I suppose, I think I saw Ross, but I am not sure about that.

Q. Where did you see——

A. Pardon me?

Q. Where did you see Paul and Ross?

A. At their office there, as I remember it.

Q. This same little service station affair?

A. Well, yes. [367]

Q. Not in the home of one of the Winans?

A. No, I have never been in the home of any of the Winans.

Q. Was that in the daytime or in the evening that you saw them on the 4th of September?

A. No, it was in the daytime.

Q. Daytime. You had some conversation with them?

A. A limited amount.

Q. What, if anything, did either one of them say regarding the title to the Lost Lake property?

A. Well, I don't think that they, either one of them, said anything about the title. Ross Winans didn't have anything to say about any of the title that I remember at all.

Q. Ross had nothing to say about it?

A. Well, that is right.

Q. Paul is the only one with whom you discussed this thing?

A. Well, evidently, yes; that is, concerning the properties.

Q. Then on the 4th there was no discussion regarding the title. What discussion, if any, did you have with any of them on any date subsequent to the 4th, after the 4th of September?

(Testimony of Chet L. Parker.)

A. Now, again we are talking about conversation, I had conversation with them? We are not talking about——

Q. What other kind could you have with them?

A. Well, I could have conversation over the telephone, could I not? [368]

Q. Well, at the moment we were confining ourselves where you were in the presence of one of the Winans. Just disregard the telephone and we will get to that in a moment.

A. Okeh. No, I don't remember when I saw him again.

Q. Prior to the closing of the deal and the delivery of the deed and the payment of the money?

A. Here again I am not going by memory. I am reading this thing here.

Q. All right, sir.

A. Because I could have seen him two or three times, and I would not remember. I might have seen him on September 8, 1951. I don't know.

Q. What makes you say you might have met Paul Winans on that date, on the 8th of September?

A. Well, I left Lost Lake, and I went right by his house or his garage there, or office, whatever you would call it, and I might have seen him that day.

Q. Did you have any discussion with him regarding the title to the Lost Lake property on that day?

A. No, not that I remember anything about.

Q. All right. Now, in any telephone——

(Testimony of Chet L. Parker.)

Mr. Jaureguy: Pardon the interruption. If you will pardon me the interruption?

Mr. Krause: Yes, go ahead.

Mr. Jaureguy: As I understand it, he does not remember [369] seeing him, and then in this last question he prompted him the date.

Mr. Krause: Whether he might have stopped there, Mr. Jaureguy. I just asked him if he might have.

The Court: Just for my information, on what day was the \$4,000 paid?

Mr. Krause: 18th of August.

Mr. Jaureguy: 18th of August.

Mr. Lindsay: 18th of August.

The Court: That was the first day that Mr. Parker thought he saw Mr. Paul Winans?

Mr. Jaureguy: Yes.

Mr. Krause: Any of the Winans.

The Court: 18th of August.

Q. (By Mr. Krause): In any telephone conversation with Mr. Paul Winans or any other Winans was there any discussion regarding title to the lost Lake property? A. I don't—

Q. The dates I am concerned with, Mr. Parker, are from the 17th of August on because that is the first time you said you talked to Paul Winans or any of the Winans. From the 17th of August on to the time that you got your deed and paid your money was there—did you have any telephone conversation with Paul Winans or any of the Winans

(Testimony of Chet L. Parker.)

relating to the ownership, the title of the Lost Lake property? [370]

A. No, I don't remember of having anything to do with specifically the title of the property, any more discussion, other than that night of the 18th, if that was the night I was there, which I presume it was.

Q. Yes, the night of the 18th. Have you told us everything that Paul Winans said on that night regarding the title, is that right?

A. Well, I am not guaranteeing he didn't say another word or two, but that it as I remember it.

Q. You have given us to the best of your recollection everything he said on that night regarding title to the property? A. Yes.

Q. Mr. Parker, did you on one of the—the first occasion when you were introduced to Mr. Paul Winans were you introduced to him as a surveyor?

A. Not that I remember anything about. I would remember it if I heard it.

Q. Who introduced you to Paul Winans?

A. Well, I believe it was Mr. Stegmann, but I might have introduced myself.

Q. As a matter of fact, having introduced yourself the night before, you really didn't need an introduction, did you?

A. When are we talking about here?

Q. If you introduced yourself on the night of the 17th, as I understand it? [371]

A. The telephone, I don't—I didn't in person, I

(Testimony of Chet L. Parker.)

didn't say, "Well, here, I am Mr. Parker," on the night of the 17th. I mean——

Q. You told him who you were?

A. Yes, but I don't want to get into an argument here. I am supposed to answer the questions. I am sorry.

Q. I don't want to confuse you, either, but your testimony was, was it not, that the first time you met Paul Winans was on the 18th in the evening, after 3:00 p.m., anyway?

A. Yes, that is right.

Q. Now, on that occasion you were introduced to him?

A. Well, I either introduced myself or I was introduced.

Q. Or you introduced yourself? A. Yes.

Q. Had you prior to the time that you met Stegmann and Paul and Ross and your son gone up to the lake—had there been any survey done of this reserved area by any other person that you know of?

A. Of the reserved area?

Q. Yes, that is the only thing you had to survey, was the reserved area, wasn't it, Mr. Parker?

A. Well, I really—that is what we had—that was what they were supposed to survey, but it seems like they had to do some other surveying to accomplish that surveying. Something else had to do with that particular part of it, an earlier [372] arrangement.

Q. My question was, did you know whether any other person had been employed to do any survey-

(Testimony of Chet L. Parker.)

ing there prior to the time that you and Stegmann and the two Winans and your son went up there to do what surveying you participated in?

A. Well, I think Mr. Stegmann went up and did some surveying on the property.

Q. You think Stegmann did some?

A. Well, I think so.

Q. Did you know of your own knowledge whether Mr. Winans had employed a surveyor to endeavor to measure off the reserved area?

A. I learned that he—I don't know when I learned it, but I learned that he hired a surveyor to represent him himself.

Q. You met him, too, didn't you?

A. What, the surveyor?

Q. Yes.

A. Well, I am not sure where it—I am not sure, but if we are referring to up to the property, no.

Q. You did not meet him on the property?

A. No.

Q. Do you know what the name was of that surveyor that Mr. Winans had employed?

A. I am not sure, but it seems like it was Haines or Hines or something like that. [373]

Q. You have got his name in your minutes enough times, Mr. Parker.

A. Can I read them so I can look at it?

Q. Certainly you can. You have got the name of Hines in there. I believe his proper name is Haines.

A. I guess I made an error then.

(Testimony of Chet L. Parker.)

Q. But, at any rate, you knew of this surveyor that Paul Winans had employed?

A. Apparently. I didn't know his correct name.

Mr. Jaureguy: Pardon me. I just want the record straight. I only saw that name on one occasion in the minutes.

Mr. Krause: Well, I may be wrong on that, too. I thought I saw it on at least two or three.

Mr. Jaureguy: I believe that is enough, but the tone of your voice indicated many times.

Mr. Krause: Well, I will modify the tone of my voice.

Mr. Jaureguy: That is better.

The Court: Proceed.

Q. (By Mr. Krause): At any rate, you and these other four people—that is, your son and the two Winans and Stegmann—were up there surveying on one occasion, were you not?

A. Yes, I think that is all that was present.

Q. That is all that were present?

A. I think that is all that were present.

Q. Mr. Parker, isn't it a fact that upon that occasion Paul Winans [374] told you of the claim of the United States against the 40-acre tract?

A. I think I have answered that already. He did not.

Q. When did you answer it?

A. Just two or three minutes ago.

The Court: He answered it in connection with the examination of Mr. Strayer.

Mr. Jaureguy: I think the witness is correct;

(Testimony of Chet L. Parker.)

however, it was longer than two or three minutes ago.

Mr. Krause: Certainly I didn't ask any such question, I will guarantee that.

Mr. Jaureguy: You asked him whether any statement was made regarding the ownership of Paul Winans, regarding the ownership of the property.

Q. (By Mr. Krause): At any rate, you are sure of that, Mr. Parker, that while you men were up there engaged in this surveying operation Mr. Paul Winans did not tell you that the United States claimed ownership of the 40-acre tract?

A. No, I remember—if he did, I certainly would have remembered it.

Mr. Jaureguy: Could I get that question again?

(Question read.)

Mr. Jaureguy: I am not sure that that "No" means "Yes" or "Yes" means "No." That is not clear to me. That is, it is clear when I hear it, but when you read it, it reads this [375] way: "Are you sure he didn't?" And the answer is: "No," which means he is not sure. Then he proceeds to say he is sure.

Mr. Krause: I will stipulate to say he did not say it.

Mr. Jaureguy: All right.

Q. (By Mr. Krause): Did Mr. Paul Winans upon that same occasion——

(Testimony of Chet L. Parker.)

The Court: You do not want to stipulate that Mr. Winans never said that; you only stipulate that this answer is to be construed as a statement that he never heard Mr. Winans say that?

Mr. Jaureguy: Oh, I didn't understand it.

Mr. Krause: That is correct.

Q. Mr. Parker, did Mr. Paul Winans on that same occasion when you five men were up there on the property engaged in surveying the reserved area tell you that a title policy which he had had on the 40-acre tract as well as the 25-acre tract, that he had been paid \$3,000 in settlement because of the Government's claim against the 40-acre tract?

A. No, I never heard anything about any \$3,000 settlement.

Q. Did you hear anything about any kind of a settlement of that policy?

A. No, I never heard anything about a settlement of any policy.

Q. Mr. Parker, just following the time that you received [376] notice and that the title company had some notice of the claim of the Forest Service to those 40 acres did you have any conversation with any representatives of the Title and Trust Company concerning the title to the Lost Lake property?

A. Either I am awful dumb, but I don't know which meeting you mean, whether it's—oh, I just don't know what you mean.

(Testimony of Chet L. Parker.)

Q. First of all, did you have any meetings with them in their Portland office?

A. At any time?

Q. Following the time that you had notice that the Forest Service claimed those 40 acres?

A. Well, I guess I really had two notices. Mr. Miller told me once, and I guess I got a letter another time.

Q. Then you got a letter?

A. Yes, I recall it.

Q. Well, after the first notice or after the second notice did you meet with any representatives of the Title and Trust Company in their Portland office?      A. Yes.

Q. Can you tell us who was present on that occasion?

A. Well, my wife—let's see, my wife and Mr. Alstadt, my attorney, Mr. Frank Marsh, and Mr. Buell. There might have been another person there. I am not sure.

Q. Can you give us the approximate date of that meeting?      A. If I read it, I could maybe. [377]

Q. Please refer to your diary any time you like.

Mr. Jaureguy: Could I just prompt him just a little bit?

Mr. Krause: Yes.

Mr. Jaureguy: If you look at your photostat, in other words, 115A, that is the subsequent portion of it.

(Testimony of Chet L. Parker.)

The Court: What is the date?

Mr. Jaureguy: October 12th, according to the diary.

The Court: All right. October 12th.

Q. (By Mr. Krause): Is that the first meeting that you had with the representatives of the title company? A. I don't think it was, no.

Q. But you had had no earlier meeting with them in their, at the Fourth Street place of business in their Portland office?

A. I don't believe I ever met with them at the Fourth Street address.

Q. Do you know where the Title and Trust Company office is here in Portland?

A. Well, I think so, yes.

Q. Didn't you pick up a title report there?

A. Yes; yes, I did.

Q. That is the place that I refer to. Did you ever have any meeting with them there?

A. No—well, I picked up the policy, but I didn't have any [378] meeting.

Q. I referred to the time after you had received notice that the Forest Service claimed this property?

A. No, I don't remember meeting them there at Fourth Street.

Q. All of your meetings with them were out there at McMinnville, then; is that correct?

A. No; no, I met them in Portland once.

Q. You met them in Portland but not in the Title and Trust Company office?

The Court: Where did you meet them?

(Testimony of Chet L. Parker.)

The Witness: My attorney's office up in the building.

The Court: Mr. Buell's office?

The Witness: Mr. Buell's office, Electric Building.

Q. (By Mr. Krause): Was that the last meeting that you had with them, or, that is, were these meetings that you held with these representatives in McMinnville before the one in the Electric Building or afterwards?

A. I think they were before.

Q. Was this meeting in Mr. Buell's office the last one that you had with the officials of the title company? A. As I remember, it was.

Q. In the meetings at McMinnville there were—do you remember how many meetings there were at McMinnville at Mr. Marsh's office?

A. When I was present? [379]

Q. Yes, when you were present?

A. No, I do not. I suppose two or three.

Q. There were two anyway, weren't there?

A. I think there was two or three.

Q. That is, where there were representatives of the title company present?

A. Yes, possibly all the title company, I didn't know.

Q. Well, yes, those men that you have mentioned; Mr. Alstadt, Mr. Buell, and on one occasion was Mr. Dwyer there, too?

A. I don't know for sure, but it seems like there was another man there.

(Testimony of Chet L. Parker.)

Q. There was always some person representing you, either Francis Marsh or Bill Dashrey or both of them?

A. Yes, I think Gene Marsh might have something to do with it, too; I don't know.

Q. Or Gene, too. What did you tell them during those meetings at McMinnville as to how many times you had seen Mr. Paul Winans to talk to?

A. Well, I don't remember telling them how many times I had seen him.

Q. You didn't tell them that you had only met Paul Winans upon one occasion prior to the time that the deal was completed?

A. No, I don't remember making that statement. I am satisfied—only on one occasion, was that your question? [380]

Q. Yes, only on one occasion?

A. I might have made mention on one occasion that I saw him but not the only one occasion.

Q. All right. Now, what did you tell them regarding the representations that Paul Winans or any Winans had made to you regarding the title to the Lost Lake property and particularly the 40 acres?

A. Well, when I refer to it, I refer to it as one piece of property.

Q. All right.

A. About the only thing that I remember saying that Mr. Winans said he had a title policy on it, and that is all I——

(Testimony of Chet L. Parker.)

Q. That he had a title policy? A. Yes.

Q. That is the same policy that you saw or were told about by the title company and the one that Paul told you about?

A. Well, I never saw Paul's. He hunted for it.

Q. Oh, you did not see Paul's policy. Is that, as near as you can now recall, everything that you told them that Paul Winans had told you?

A. It seems like I told them that he said he had a good title to it. He had told me he had a good title.

Q. A good title?

A. I am not sure about that.

Q. Do you know what a marketable title is, Mr. Parker? [381] A. No, I sure don't now.

Q. Did you know at that time what a marketable title was? A. I thought I knew then.

Q. You thought you did. Well, did you use the term "marketable" in connection with describing the kind of a title that a person had? I mean, were you accustomed to using that word?

A. "Marketable," well, I possibly do. I don't know what it means. I guess if you market something, why, that would be——

Q. At any rate, your best recollection is that you told them that he had—he said—he told you he had a title policy and that possibly he said he had a good title; is that right?

A. I think that I might have told them that.

Q. You might have told them. Have you got your testimony up there now?

(Testimony of Chet L. Parker.)

A. I got a desk full of it. I don't know what.

Q. Would you turn to Page 254 to refresh your memory?

The Court: What question, Mr. Krause?

Mr. Krause: The first question on the page, on Page 254: "Did you ever tell any of these persons Mr. Buell has named as being present at any of these meetings that Paul Winans told you he had a good and marketable title to this property which he was selling you?"

"A. I remember saying that, yes."

Did you so testify at that time? [382]

A. Yes.

Q. All right, the next one:

"Q. Did you also say that Paul Winans had never told you anything about the Government making a claim to the back 40 acres?"

And your answer was:

"A. I don't know whether I told him or not."

Was that your answer to that question?

A. That is what I answered.

Q. "Q. I am not asking you about that. I am asking you what you told them."

Your answer:

"A. Well, I don't remember of telling them that.

"Q. Could you have told them that?"

"A. I possibly could have."

Now, taking the next question:

"Q. Did you tell them that Paul Winans had never told you anything about a policy of title insurance he had on that property which had been

(Testimony of Chet L. Parker.)

paid off by reason of the Government claiming ownership of the back 40 acres?"

Was that question asked you, and did you answer that: "I don't know that I told them that. I don't remember [383] of telling them that. I probably did"?

A. Yes, I probably answered it. I——

The Court: Is that clarified in the next question? I do not understand that question myself.

Q. (By Mr. Krause): "Didn't they ask you the question, 'Well, didn't Paul Winans tell you that he had some title insurance on this property which had been settled because of the Government claim?' "

Your answer is: "Now we are changing this."

The next question:

"Q. No, I am still talking about the conversation between you and representatives of Title and Trust Company, the plaintiff in this case. I am trying to find just what you told them with reference to what Winans did or did not tell you."

Your answer is:

"A. Well, I don't remember all the conversation."

Now, the next question:

"Q. Did the Title and Trust Company ever ask you to warrant in writing that Paul Winans told you he had a good and marketable title to the back 40 acres?"

Your answer is:

"A. Not that I remember."

(Testimony of Chet L. Parker.)

Do you recall that question and answer, Mr. Parker?

A. Well, not vividly, but I suppose I answered it that way. [384] It is written down that way.

Q. Mr. Parker, did you tell them upon any of those occasions when you met with them either in Mr. Marsh's office or in Mr. Buell's office that the Winans had misrepresented anything to you?

A. I don't remember of saying that.

Q. When you bought this property, what did you rely upon, Mr. Parker?

A. Money I had in the bank.

Q. That is what you used to buy it?

A. Yes, that is what I mean.

The Court: He means did you rely on the title report, or did you rely on Mr. Winans' statement, or did you rely on both of them?

The Witness: Well, more or less both of them, but the title report would be the—before I paid for the property, why, I relied on the title report.

Q. (By Mr. Krause): Let us find out what you mean by "more or less upon both of them."

A. Well, they both checked.

Q. You mean the title report showed a good title of what Winans said about the title?

A. Well, the \$8,000 deal checked.

Q. That is, he had a title policy, too?

A. Yes, it both checked to the right [385] amount.

The Court: I think you did not hear that last statement. Mr. Parker, did you say at the time you

(Testimony of Chet L. Parker.)

paid the money you relied on Title and Trust's report, or did you rely on both the statements?

A. At that time I relied on Title and Trust. I am talking about the ninety-some-odd thousand dollar one, of course, when I say "Paid."

Q. (By Mr. Krause): I cannot hear that, Mr. Parker.

A. I am talking about the large sum of money when I say that.

Q. You had not paid anything yourself on this deal until the very last payment, had you?

A. Well, I gave Mr. Stegmann a \$25,000 check.

Q. At any rate, that is the same check that was not cashed until the 20th of September?

A. That's right. That is when we redeposited it.

Q. When you redeposited it?

A. Yes, or my wife did, rather.

Q. But as far as the thousand and four thousand were concerned, Stegmann owed you that money at that time, did he?

A. That is right.

Q. That had been charged against his \$10,000 drawing account?

A. Yes.

Q. By the way, the Court several times in asking you questions referred to an account that Stegmann had in The First [386] National at McMinnville. Do you recall that? Well, in any event, did Stegmann have an account in The First National Bank at McMinnville?

A. I think I have answered that. I don't know whether he did or he didn't have.

(Testimony of Chet L. Parker.)

Q. Oh, you said you did not know whether he had it?

A. I don't know whether he did or he didn't.

Q. These checks that he put in there, at any rate, were charged against your account; that is, the Phillips Construction Company account?

A. Well, I think they was charged against both accounts, some of them, but I am not sure. I know some of them had went into that, some of them were charged against Phillips.

Q. What is the lay of the land with respect to the 25-acre tract and the 40-acre tract? Do you have to cross the 40 acres to get to the 25, or is the reverse true?

A. Well, I suppose it would depend on which side of the property you was on. If you was on the north side, you might have to go across that. If you was on the south side, you would have to go back across the other.

Q. I did not assume you were flying in, but going in by the way, the way you did, driving in by the roadway, on which portion of this 65 acres do you first get onto, then?

A. Well, if you drive in and park your car and walk about a half a mile, then you come into between the meandering [387] corner, I think they call it, and quarter-corner.

Q. That is, you would then be on the 25-acre tract, would you?           A. Yes.

Q. I see.           A. Or that lot there on the lake.

Q. If you went farther, in what direction would

(Testimony of Chet L. Parker.)

you have to go in order to get onto the 40-acre tract?

A. I suppose you would have to go about 800 feet, something like that, more. I guess you could go in two or three directions to get onto it from the time you entered the property. Generally speaking, I suppose west, I believe—if I could see a map, I will know.

Q. You would have to see a map in order to tell?

A. To be sure, yes.

Q. At any rate, coming in from the roadway and along the trail that you have just told about, you would first get onto the 25-acre tract, would you not? A. Yes.

Q. These 14 acres that you have there to which you have a good title are only worth about \$10 an acre, are they not?

A. Well, to start in with, I don't know whether I got a good title or not, but I presume I have.

Q. You do not know whether your title to the 14 acres is good?

A. No, I don't know that it is good. [388]

Q. You do not, but has anybody ever told you that there was any question about your title to the 14 acres? A. No.

Q. Nobody has?

A. No, they have not told me. They haven't told me one way or the other.

Q. Assuming for the moment that the title is perfectly good, those 14 acres have no value in excess of \$10 an acre, do they?

(Testimony of Chet L. Parker.)

A. Not to me, no.

Q. How much timber was there on that 14 acres, according to your own cruise?

A. I think about 26 to 28 per cent of 6,000,000 feet.

Q. It would be at least a quarter of 6,000,000 feet, then, 26 or 28 per cent?

A. Something like that.

Q. That would be about a million and a half of timber?

A. I don't think it would be quite that much.

Q. Not quite that much?

A. I don't believe so.

Q. Still it is only worth \$140, the 14 acres?

A. That is right, to me, that is.

Q. You would be prepared to sell it now, would you, for \$140 as soon as we leave here?

A. Yes; you pay for the instruments, or I suppose you would [389] want a title policy so you will have to pay for that. I will sell it to you as soon as we leave.

The Court: We are not going to hold you to that bargain, Mr. Parker.

The Witness: It is perfectly all right. He can buy it.

Q. (By Mr. Krause): That is the figure that you put into your tax return, isn't it, \$10 an acre?

A. Yes.

Q. Why is it of such low value?

(Testimony of Chet L. Parker.)

A. Well, I don't think the public would let me log it now with just such a small amount on there.

Q. The public will not let you log it?

A. I am doubtful if they would.

Q. Who are the public, Mr. Parker?

A. You and I and everyone else who lives in the United States.

Q. I did not know that we had anything to say about whether you logged off your own land, but——

A. Well, I have to have a right-of-way into this property, and it is—to build a road in for this small amount of timber and to go where the road would have to go if you was going to log this portion only would destroy more public timber than you would ever receive off of it, unless the government would allow you to go way around, and then you would destroy, well—it would be prohibitive to put the road in, but if you would have the 40 acres you would be back behind this piece away [390] from the lake.

Q. You would have to get a right-of-way over forest reserve property in order to get the logs out from this 14-acre tract?      A. Yes.

Q. That is correct; and, therefore, you think it is substantially of no value?

A. That is right. Well, \$140.

Q. Yes, well, it has no value as a recreational site either, I suppose?

A. It certainly would not have. You got to get running water. You drive your car to running

(Testimony of Chet L. Parker.)

water. Your wood is chopped and the place to camp free. Then why have a place you have to walk a half-mile to get to and then pack your wood, chop your own wood? To me it would have no recreational value.

Q. Mr. Parker, who is this Paul Wardell that you drove up to Hood River with on one occasion?

A. Oh, he is the son of a dealer.

Q. A what? A. A dealer.

Q. What kind of a dealer?

A. Well, just a dealer in everything.

Q. Where does he live?

A. The son or the father?

Q. Well, the one you took up to Hood River. I don't know [391] whether he is the son or not.

A. Well, he lived right around Sheridan, Oregon.

Q. How long had you known him before you took him up there? A. Approximately?

Q. Yes, approximately.

A. I don't really, I can't place it exactly. It is quite a while, anyway.

Q. You had known him for a number of years before 1951, anyway? A. Yes.

Q. Was he a friend of yours?

A. Well, I would not say a friend.

Q. Had you had some business dealings with him?

A. Well, he was with his father, yes.

Q. You had had business dealings with his father? A. Yes.

(Testimony of Chet L. Parker.)

Q. Which one did you take to the lake, the father or the son?

A. I took the son because the father is dead.

Q. The father was dead at that time?

A. Yes.

Q. Was this—these dealings, of course, with the father had taken place before his decease, but did you have any dealings with the son, the one you took to Hood River, business deals of any sort, after the father's death? [392]

A. I might have.

Q. You cannot say for certain whether you did or didn't?

A. No.

Q. Did you know anything about his financial status? Did you know whether he had any money or didn't?

A. Oh, no, not exactly. The family was rumored to have a considerable amount of money.

Q. But you knew nothing about it personally?

A. No, they were pretty close-mouthed.

Q. His being brought up there to Hood River, was that at your instigation or Stegmann's?

A. Well, I think it was a little bit of both.

Q. Both of you?

A. Yes.

Q. Just tell us the circumstances under which Wardell was brought up there to Hood River.

A. Well, it had to do with this housing and irrigation project that Mr. Winans was engaging in at that time. I am quoting Mr. Winans, of course. I am relying on what he told me, that he was engaging in it. He wanted to get some group together

(Testimony of Chet L. Parker.)

that had more money to build, to get more money to build more homes and to get this pipe line run down to the homes.

Q. You had had some conversation with Paul Winans regarding this housing project and that Paul needed financing; is that right? [393]

A. I think there was some discussion of it, but I am not sure it was with me prior to that.

Q. Prior to the time that you took Wardell up?

A. Yes.

Q. Did I—on August 31, will you look at your diary again and see what it says there about your—well, I am mistaken about that. Your diary does not indicate that you had any conversation about the housing project with Paul Winans on the 31st of August when you went up there, the day you were surveying.

A. No.

Q. Do you, independently of your diary, recall any discussion with him about financing his housing deal?

A. Well, I think there was some discussion all right.

Q. There was. Did you suggest that you knew this man, Wardell, might be interested in such a project?

A. I don't know whether I suggested it to him or not myself.

Q. Winans did not know Wardell?

A. No, I think that Stegmann might have made the arrangements with Wardell or else with me, and

(Testimony of Chet L. Parker.)

then I made them with Wardell. I don't know which one of us did.

Q. You do not know, but both of you knew Wardell?

A. Well, presumably, yes; I knew him, certainly.

Q. You knew him, and you think that Stegmann knew him, too?

A. Well, I am sure Stegmann knew him. He didn't live far [394] from there.

Q. Both of you thought that he was a man who might be willing to finance Mr. Winans' housing project?

A. Of course, I wasn't too interested whether he financed his housing project and his pipe line or didn't.

Q. What is your best recollection as to whether you told him, told Paul, that you would put him in touch with someone who might be interested in financing it?

A. We are speaking about finding Winans or Mr. Paul Wardell?

Q. Paul Winans.

A. Well, I really don't—this is purely from memory, and I just certainly cannot remember whether Stegmann got in touch with Wardell. I know I took Wardell up there—or whether I got in touch with Wardell by Stegmann's request now, I am not sure of which it was.

Q. It was my recollection, Mr. Parker, that earlier you had said that you took Wardell up as a favor to Stegmann. As I remember, that is, that

(Testimony of Chet L. Parker.)

was what the deal was. You didn't—you had not told Paul Winans that you would find someone for him that would finance this deal?

A. Well, I certainly wasn't going to waste my time hunting anything for him.

Q. So all you had to do with that end of the thing was to Mr. Wardell up?

A. Yes, I didn't even pay any attention to what Mr. Winans [395] and Mr. Wardell said. In fact, I was—I deliberately didn't want anything to do with it.

Q. But it was important enough for you to make some notes in your diary about it?

A. Well, now, in reference to what I put in my diary, the importance of a thing apparently doesn't have anything to do with what I put in the diary.

Mr. Jaureguy: Well, I want to ask that that be read, what is in the diary, in view of Mr. Krause's statement that it indicates importance.

The Court: Well, what does the diary say?

Mr. Krause: You can turn to September 4th.

Mr. Jaureguy: That is the date I had in mind.

Mr. Krause: "Paul Wardell and I drove on to Hood River to see Paul Winans. Walt Stegmann and Paul Wardell are working out a deal on Winans' housing. I am having nothing to do with it. The two Pauls did a lot of talking, but I stayed outside and did not hear any of the conversation. Then I drove P. Wardell to Hood River and he checked the courthouse records and found that P. Winans at various times had judgments against him

(Testimony of Chet L. Parker.)

and he was not going to have anything to do with him at all. Then drove to Portland. Got home 8:00 a.m."

That was the notation you made regarding the visit of Wardell to Hood River?

A. That is correct. That is correct, that I made the notation. [396]

Q. Yes, and when you say in your notes here that you stayed outside, was that outside of the house or outside of the building?

A. It would be outside of his office.

Q. Outside of his office. That is, Wardell and Paul and Stegman were in this service station building?

A. How did Stegmann get mixed up in this now?

Q. Well, it says here in your notes, "Walt Stegmann and Paul Wardell are working out a deal on Winans' housing." I did not mix them up. Your notes say that in there.

A. How did that have anything to do with Mr. Stegmann being in his office in that statement, with Mr. Paul Wardell? That is what I do not understand. I am sorry.

Q. Oh, I am sorry. Then when you brought Wardell up there Stegmann was not there?

A. No, he was not in my presence at any time.

Q. Just you and Wardell and Winans were there that day, then?

A. There was two Winans, Paul and Ross Winans.

(Testimony of Chet L. Parker.)

Q. Paul and Ross, yes.

A. Now, when I brought him there, I don't know whether Ross was there, but sometime during that time Ross was there.

Q. Stegmann, as far as you recall, was not around?

A. I don't think Stegmann was around at all. I didn't see him that I remember.

Q. Do you have a station wagon, Mr. [397] Parker? A. No, I do not.

Q. In 1951 did you drive a station wagon up to the Lost Lake property at any time?

A. I had a station wagon then. I might have.

Q. You might have driven it up to the Lost Lake property?

A. Yes. I don't think it is called a station wagon, however. It is a Suburban I had, not a station wagon. There is quite a lot of difference between the two.

Q. You recall being up there at the Lost Lake property on September 7, 1951, don't you?

A. Not from memory. I could read my——

Q. Take a look at your diary again.

A. If the diary is right, which I presume it to be, why then, I recall being up at Lost Lake on the 9th month, 7th day, of 1951.

Q. You camped up there that night, the night of September 7, 1951, did you not? A. Yes.

Q. Do you recall meeting anybody up there at Lost Lake on that occasion, on that day?

A. Well, the lake was—the day before the night we stayed there? You see, we went there two days,

(Testimony of Chet L. Parker.)

two nights, and then the daytime; so you are speaking of the night before or when?

Q. You were there on September 7th and stayed there that night, were you not? [398]

A. Yes. I was there both on the day of the 7th and on the day of the 8th. Now, was that on the 7th are you referring to?

Q. I am asking you whether you met anybody up there on the 7th of September?

A. There was people there.

Q. There were people there?

A. Oh, hundreds of them. They was as thick as bears in the woods.

Q. Well, do you want us to take you literally now, Mr. Parker, that there were hundreds of people there?

A. Oh, there was lots of people there, as I remember.

Q. That was after Labor Day and after school had commenced most everywhere?

A. Well, I don't know when school commenced, but I know there was a lot of people there.

Q. Do you recall having any conversation with a man there regarding what you were doing up there?      A. Yes, I believe I did.

Q. As to why you were up there at Lost Lake?

A. Yes, I think I had a discussion with quite a few people. What specific person do you—

Q. I just had in mind, and I may be wrong about it, on your testimony earlier you said you had no

(Testimony of Chet L. Parker.)

conversation with anybody up there on that day, I think. [399]

Mr. Strayer: What date is this?

Mr. Jaureguy: September 7th. I do not recall that testimony.

Mr. Krause: All right. I am asking him now whether he had any conversation with anybody up there at the lake as to why you were up there and what your business and occupation was.

The Court: Can you answer that, Mr. Parker?

The Witness: Well, it seems, it is kind of hazy in my mind. It seemed like there was a fellow stopped in a car. I didn't know his name, and he worked for the Government. It seems like we were discussing—it seems like I made mention that I was with the Engineers, with the Government at one time.

Q. (By Mr. Krause): You mentioned you were an engineer with the Government at one time?

A. I am not sure I did, but it seemed like I did. I worked out of the Terminal Sales Building in Portland. I think I made mention of that to him, but I am not sure.

Q. When was that that you were an engineer with the Government, Mr. Parker?

A. Oh, I believe it was, well, it was after I got back from Honolulu. I guess 1942; I believe it was 1942.

Q. For how long were you with them?

A. Oh, five months; five months I was with them. [400]

(Testimony of Chet L. Parker.)

Q. Where had you gotten your engineering training? A. I didn't get any.

Q. But, still, you were working for them as an engineer? A. That is what I said, yes.

Q. Did this gentleman introduce himself to you, tell you who he was, what his name was?

A. Well, the gentleman I am talking about was farther than from you and I. We must have been 60 or 70 feet from each other, and he was in his car with his motor running. I remember him stopping, hesitating there. I think I had my dog with me is the reason he stopped. He ran out across in front of him.

Q. You were not engaged at that time in working with a transit and surveying on the property on this 25-acre tract, were you?

A. No. I never had a transit in my hands in my life that I ever remember anything about.

Q. Well, now, let me just ask a final question on this. Isn't it a fact, Mr. Parker, that on September 7, 1951, while you were on the edge of Lost Lake on the 25-acre tract carrying a transit, you yourself carrying a transit, that you talked to a man whose name is Alva L. Day, and that you told him that you were an engineer running a meander line around the edge of the lake. Do you recall such a conversation with this gentleman? [401]

A. No, I don't, and, as I say again, that I did not have any transit in my hands.

Q. Of course, you did not tell him that you

(Testimony of Chet L. Parker.)

were an engineer lining a meander line around the lake?

A. I might have told him I was an engineer and worked for the Government at one time.

Q. Did you further tell him that you wanted to establish the difference between the former meander line when the water was lower?      A. No, no.

Q. You had no such conversation?

A. Well, I don't remember the conversation. He made the conversation. He had a little bit to say about it, however.

Q. He did?      A. Yes.

Q. You were discussing the meander line?

A. Yes.

Q. Well, now, was he 70 feet away from you at the time you were doing that?

A. Yes, he must have been at least 70 feet away from me.

Q. How could he have gotten his car over there? I thought you said he was sitting in his car.

A. He was sitting in his car, yes.

Q. Had he driven that car up to the 25-acre tract?

A. No; no, that is why he didn't see me carrying any transit [402] around because when I talked to him we was not on the 25-acre tract, and when I talked to him, if this is the man—I don't know whether it is, and I presume it is—then we was clear out in this camp grounds, and they have a main entrance road, and my family and myself and my equipment such as a car and camping stuff.

(Testimony of Chet L. Parker.)

Q. Didn't this man say to you that it was pretty wet to be working out with a transit at that time?

A. No, I don't remember the man saying anything about that.

Q. Did you tell this man anything about a deal involving the Winans property?

A. Not that I remember. My wife was with me at the time and standing beside me, and she and some woman was doing a little talking, and the woman was also in the car.

Q. Well, did you tell him that you were making a survey of the Winans property for someone else and would have to turn in a report?

A. No; when we talk about surveying, surveying things, I use that word sometimes, surveying, but not in the sense of being a surveyor, a civil engineer. Let us say I surveyed this building for its worth or something like that, and I could have possibly used that word in that connection. It is very commonly I use that word.

Q. Did you not also tell him at that time——

Mr. Jaureguy: Pardon me. He never did answer the [403] question.

Mr. Krause: Oh, pardon me.

Mr. Jaureguy: No, he did not answer the question.

(Question read.)

The Court: He answered that he sometimes uses the word "survey," but he didn't answer the full question.

(Testimony of Chet L. Parker.)

Mr. Jaureguy: That is what I mean.

The Court: Did you tell him that you were doing it for someone else and would have to turn in a report?

The Witness: No.

Q. (By Mr. Krause): Did you also tell this man upon this occasion that the dam at its lowest level had raised the level of the lake? Did you tell him that?

A. No, I absolutely did not. That was in the conversation, however.

Q. That was in the conversation? A. Yes.

Q. About the level of the lake being raised?

A. I remember that distinctly. That is about the only distinct thing that I do remember about it.

Q. That he told you, then, that he was an engineer himself, didn't he?

A. I don't remember that he said he was an engineer.

Q. That he had to do with the construction of the dam on Lost Lake? You don't recall that [404] either?

A. It seems like he said something about——

Q. And that he disagreed with you about the level of the lake having been raised?

A. No, there wasn't any disagreement. He was telling me. I was listening. I was not telling him.

Q. In your testimony here in the court you have talked about the level of the lake having been raised, and, therefore, causing this waterfront to become swampy.

(Testimony of Chet L. Parker.)

A. Yes, that is the information this man gave me. I didn't give it to him. He gave it to me.

Q. Will you again turn to your deposition at Page 246 and start with the last question on the page in which you talk about this trip up there to Lost Lake. The first question is:

“Q. You camped up there just during the day?

“A. No, we stayed all night. It rained, by the way.”

Was that your question that you gave to that question? A. Apparently.

Q. Well, did you or didn't you, Mr. Parker?

A. I think I did. I don't know that I did.

Q. Well, is it a true statement?

A. Yes, it rained. I am sure about that.

Q. “Q. You don't recall getting into a discussion with [405] anybody about what you were doing up there?

“A. No, I don't recall. It was quite obvious what we were doing—camping.”

Was that question asked you, and did you give that answer?

A. Well, I guess—I gave the answer. I gave that answer, yes.

Q. All right. Now, is that still a true answer?

A. Answer?

Q. Your answer to that question.

A. Yes, I don't change it any.

Q. You won't.

“Q. Is it possible you told somebody you were just up there surveying?

(Testimony of Chet L. Parker.)

“A. No, it would not have been possible to tell someone I was surveying because I wasn’t surveying, in the sense of surveying lines.”

Did you give that answer to that question?

A. Yes.

Q. I wish before we go on there you would tell us just what the difference is between surveying and surveying in the sense of surveying lines?

A. Well, my English may not be the best in the world, but if I am going to survey a building or a peach orchard or—— [406]

Q. Mr. Parker, we would like to talk about real estate now, I mean ground.

A. Well, all right.

Q. Not a building.

The Court: I think he has answered this question. His “surveying” is used in the sense of estimating value.

Q. (By Mr. Krause): Is that correct, Mr. Parker?

A. Yes; if I surveyed this building, I would take its value and its construction.

Q. When you were surveying this property up there you were just looking at its value?

A. When are we supposed to be surveying, and how?

Q. On the 7th of September, 1951, when you were talking with this gentleman at Lost Lake.

A. Then if I used the word “surveying,” then I was looking at its value, yes.

(Testimony of Chet L. Parker.)

Q. The next question:

“Q. Possibly you could have told someone that you were going to buy some property up there and were just looking it over?

“A. Now, that could have been possible.

“Q. You just don’t recall speaking to anybody in particular up there and spending some time with them?

“A. Well, I definitely didn’t spend any time with [407] anybody.”

Is that the answer you gave to that question?

A. Yes.

Q. “Q. You are sure of that?

“A. Well, definitely and absolutely I didn’t spend any time.”

Was that your answer to that question?

A. Yes.

Q. The next question:

“Q. We will say a half-hour?

“A. No, I didn’t spend a total of a half-hour with anyone, any one person.”

Was that your answer? A. Yes.

Q. The next question:

“Q. I didn’t mean to quibble. A quarter of an hour. I mean you emphasized a half hour. Let us reduce it to fifteen minutes.

“Mr. Jaureguy: You were the one that talked about a half hour.

“Mr. Lindsay: I was just trying to give him an idea of how long a reasonable time was so that he

(Testimony of Chet L. Parker.)

might recall having talked to someone in [408] particular."

Now, your answer is: "Well, I talked to several people. There were many people there. I don't remember of talking to any specific person."

Now, that was the answer you gave at that time, was it not?      A. Yes.

Q. But you do now remember talking to this specific person about the level of the lake?

A. Well, I don't know this—I remember talking to someone about the level of the lake. I talked to several people. I remember we were getting water, we were water out of a community faucet there, and we would go over there and naturally we would say, "Hello, good-bye, how is camping," and so on.

Q. The only thing I was inquiring about was that you had conversation relating to these matters that I read to you. Now, you do recall speaking to someone about the level of the lake?

A. I think I spoke to several about the level of the lake, not just this one gentleman.

Q. And that this man that you spoke to about the level of the lake told you that he had had something to do with the dam that had been constructed there?

A. I am not sure this is the same fellow that had construction on the dam, but someone I talked to that day indicated [409] to me that they cleaned out the waterway or something.

Mr. Krause: I think that is all.

(Testimony of Chet L. Parker.)

Examination

By the Court:

Q. For some years prior to August, 1951, had you purchased a number of tracts of timber?

A. Yes, yes.

Q. How did you buy them? Did you have cutting contracts on most of them, or did you buy the timber outright, or did you buy the land and the timber both?

A. Both ways.

Q. Sometimes you merely bought the timber, and other times you bought the land and the timber?

A. Yes.

Q. When you bought the real property, that is, the land and the timber, who prepared the deeds?

A. Well, the people I purchased it from, as I remember.

Q. You would always get deeds from the people from whom you purchased?

A. Yes, as I remember.

Q. What kind of deed would you ask for?

A. Well, I don't think I asked for any, but they always gave me warranty deeds, as I remember.

Q. Most of the time they gave you warranty deeds?

A. Well, I think—that is the only kind I ever got, as I [410] remember it, ever have got.

Q. A general warranty, or special warranty?

A. I don't know the difference.

Q. Did you know what a bargain-and-sale deed was?

A. No; no, I certainly do not.

(Testimony of Chet L. Parker.)

Q. How about a quitclaim deed; didn't you take any of those?

A. I don't remember ever taking a quitclaim. I have heard attorneys talk about it.

Q. You buy quite a bit of property in the State of Washington, don't you?

A. No, I have only bought, oh, probably four or five pieces.

Q. Are you not the Parker that advertises in the paper to buy timber in Vancouver?

A. No.

Q. Is there not a Mr. and Mrs. Parker who buy timber in Vancouver?

A. And advertises?

Q. Yes.

A. No, I never advertised to purchase anything, your Honor.

Q. This Marsh that you were talking about, is that John Marsh or Fred Marsh in The Dalles?

A. Well, he is from Portland, the man I am talking about, John Marsh here in Portland.

Q. Let me ask you one or two questions about reliance. Do I understand your testimony to be that the time you paid the [411] \$25,000 and the \$1,000 and the \$4,000 you relied on the statement of Mr. Winans that he had good title?

A. I was relying on that instrument that said he would give a good deed.

Q. You were relying not on any conversation with Mr. Winans but on the option agreement?

A. Yes, it said it would have a good deed on it.

(Testimony of Chet L. Parker.)

Q. At that time you had not been to the title company and found out that they had issued a \$8,000 policy at one time, had you?

A. I had on the 13th.

Q. On the 13th you had?

A. I think that that is the time that the lady showed me the file.

Q. And so, at the time you paid \$25,000 you had been to the title company? A. Yes.

Q. At the time you paid the \$95,000 did I understand you merely to say that you relied on the title company report and not on Mr. Winans, or did you rely on both of them at that time?

A. Well, I relied—I felt that that would furnish the title if I got a deed and I got a title insurance policy, that would be it, and I relied on the title company to take care of that part of it. [412]

Q. At the time you paid the \$95,000?

A. Yes, I was relying on the purchaser's policy.

Q. But that was not the case at the time you paid the \$25,000, the \$1,000, and the \$4,000; you were relying on the instrument which Mr. Winans had signed? A. Yes.

Q. I just wanted to get that clear.

The Court: We will recess until 9:15 tomorrow morning.

(Thereupon proceedings herein were adjourned until 9:15 o'clock a.m., January 22, 1953.) [413]

\* \* \*

(Testimony of Chet L. Parker.)

Cross-Examination

By Mr. Ryan:

Q. Mr. Parker, on this Murphy-Nelson tract you were familiar with the logging show on that tract at the time Mr. Stegmann was working on it?

A. Yes, I was fairly familiar with it.

Q. Do you recall a fire that occurred on that particular logging show in the fall of 1949?

A. Yes, that was a portion of a large fire.

Q. Was that prior to the taking of the mortgage on that tract by yourself for Mr. Stegmann, the timber rights on that tract?

A. I would not be able to answer that. I don't remember, we should possibly say.

Q. Could you tell us whether that fire affected the profit [414] of Mr. Stegmann on the tract?

A. Well, it would naturally, yes, considerably.

Q. Have you any knowledge of the extent of that fire?

A. Purely a guess. After all, I didn't get on it and cruise it, but I would say the fire would involve probably a million and a half, two million feet of timber. It is purely a guess, however, and that wood where it was at would be quite a large sum of money. I think some of it was felled and bucked, logged, and a bridge or two involved, as I remember, and some rigging and stumpage and so forth.

Q. The mortgage in December on the timber

(Testimony of Chet L. Parker.)

rights to the Murphy-Nelson tract that you described in your testimony, you say that was for an advance of \$6,000?

A. Yes, as I remember it, it was six thousand. It was for the—it principally had to do with falling and bucking the right-of-way that he had and rocking and filling the road on the right-of-way. The right-of-way he had was pertaining to the timber, and the right-of-way was his.

Q. Were you familiar with the winter of 1949 in the logging industry? Do you recall that?

A. Yes, very vividly, very vividly; yes.

Q. In what respect do you recall it?

A. Most of us all were broke in 1949.

Q. Most of you were all broke?

A. I say most of us were all broke up in [415] 1949.

Q. I am referring particularly to the fact that it was necessary to rock a road into the Murphy-Nelson tract. Would that normally have been necessary if it had not been for the severe weather?

A. Well, it was a bad winter. The reason I remember that, the Harold brothers tried to get a road opened up during the early part of the year. I also was interested in opening it up, and the judge and commissioners kept it closed a considerable time, and I remember it was a hard winter both physically and financially for loggers and lumbermen.

Q. You had been shown this statement of the

(Testimony of Chet L. Parker.)

amount due on your mortgage from Stegmann, Mr. Parker, yesterday. Do you recall that?

A. Yes, I recall that.

Q. It says here on the original mortgage \$2,962.62. Had Mr. Stegmann been paying you out on the original mortgage at that time?

A. Well, it is my wife's entries. He had been paying me, yes, paying me money.

Q. That would indicate that to you?

A. Yes; yes, he had been paying me.

Q. At the time of the assignment of his rights of the Murphy-Nelson tract to you in that contract between yourself and the Rutherford Logging Company and Mr. Stegmann, this summary of your indebtedness and also the current indebtedness [416] for Mr. Stegmann was made up, I assume, March 23, 1950?

A. Well, Mr. Torp made up that contract, as I remember. For some reason he explained the Collector or somebody else—I would have to sign that even though I didn't have anything to do with it. He explained it to me, that I owned—I had loaned money at interest in it or something, and I would have to sign with it or something. I don't understand at all what that was.

Q. Being a party to it.

Now, that agreement of March 23, 1950, when the Rutherfords began to log out the tract, was made primarily for the purpose of paying out the balance of your indebtedness, was it not?

A. Yes.

(Testimony of Chet L. Parker.)

Q. And as a result of that agreement and the logging that took place subsequent to it—I believe the contract had until November, 1950, to run—were you paid out on your indebtedness from Mr. Stegmann?

A. On that Murphy-Nelson piece?

Q. Yes.

A. Yes, Mr. Stegmann paid me in full.

Q. Did, in fact, Mr. Stegmann abandon all of his rights to that piece at that time?

A. That I don't remember.

Q. You don't remember? [417]

A. I just don't remember the details on it. I believe so, but I am not sure.

Q. Would there have been any additional profit-ing from that transaction other than the paying out of the indebtedness of Mr. Stegmann?

A. Well, yesterday I didn't—it seems like I was to get a dollar a thousand for part of my—for making the investment. I didn't see that in the contract yesterday, but it might not have been in this particular tract. Maybe it was with someone else. I quite frequently took a dollar a thousand for rock-ing roads in.

Q. But you are certain of this, that by virtue of this arrangement Mr. Stegmann was able to fully cancel his indebtedness to you?

A. Oh, yes, he didn't owe me any money on that contract.

Mr. Ryan: That is all the questions I have.

The Court: Mr. Strayer?